

Dror Ze'evi and Ehud R. Toledano (Eds.)
Society, Law, and Culture in the Middle East
"Modernities" in the Making

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Managing Editor: Katarzyna Michalak

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This volume is dedicated to the beleaguered, common people of the post-Ottoman Middle East, the real victims of unscrupulous leaders and intractable belief systems. May calm and peace be upon these troubled lands.

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Introduction: **Unpacking Middle East Modernities**

Dror Ze'evi and Ehud R. Toledano

Social Transformation and the State in the Middle East

If history is an “unending dialogue between the present and the past,”¹ then from our contemporary perspective, the past is bound to appear unstable, fraught with uncertainties, hard to explain in clear-cut, neatly conceived terms. Once ruled by the Ottoman sultans, the vast domains covered in this volume have in recent years experienced great turmoil that set in motion processes which are far from complete and whose nature, direction, and implications are unpredictable. The series of revolutions that has been tearing apart many states in the Middle East and North Africa since the end of 2010 were preceded by the attacks of 9/11 in 2001 and the global financial crisis that has affected economies the world over from September 2008 onward. All these developments have intensified uncertainties, underlying growing doubts about our ability to understand socio-political, socio-cultural, and economic phenomena in human history; they have naturally led us to ask new questions about the past.

This volume offers a fresh look at change—the driving force of history anywhere anytime. Change, as we have come to realize over generations of writing history, can be rapid and transformative, or it can be slow and incremental. Shades of different processes of change can be located between these two poles on the same continuum. Whereas some forms of change are clear and easy to detect, such as those emanating from revolutions, other forms of change occur without the awareness of the people who experience them, noticeable only after they have achieved *masse critique*. And, of course, there are periods when attempts to introduce change fail, as continuity predominates and structures persevere for long periods of time, appearing as stagnation. Incidentally, regression and decline—not just progression and advance—are also forms of change, and one often leads to the other. This volume seeks to deepen and broaden our understanding of all these forms of change in a modern Middle East context.

The other area in which we hope to contribute to the existing literature is openness to theory in the social sciences, which can provide plausible interpretations of the history of change in the Middle East and North Africa. The judicious use of insights from bodies of theoretical knowledge serves most contributors to challenge basic notions in the current discourse on the relationship between society, culture, and law. Finally, the chapters in this volume shift the focus from an external to an internal perspective, as agency transitions from the “West” to local, Ottoman and Arab, actors in the regions discussed here. However, the shift of focus put forth in many chapters of this volume is not a total revision, nor an ambitious new interpretation of how Middle

1 E.H. Carr, *What is History?* (London: The Macmillan Press, second edition, 1986), 24.

East and North African societies were being transformed. Rather, it is to point out the ongoing interaction between internal processes and external stimuli that produced the brands of modernity that we find in these regions. So, here we need to begin with defining, or perhaps redefining, the very notion of modernity/modernities.

Among the most influential categories being deconstructed or tossed away, modernity—both in the singular and plural forms—has been a leading victim of social theory critics. But as such analytic categories fall out of grace with scholars, they are not replaced by powerful alternatives, capable of improving our understanding of crucial processes, or even in identifying new, undetected movements in history. Rather, we keep getting soft power-type substitutes, which hesitantly offer partial narratives with very limited, unambitious explanatory efficacy. Although history is not supposed to be predictive, having failed to even insinuate the likelihood of a global financial quagmire or an Arab Spring/Islamic Winter, it has left historians modestly cautious about their ability to explain the transformations that did occur during the long nineteenth century in the Ottoman Middle East and North Africa.

Frederick Cooper has masterfully reduced to virtual rubble the power of “modernity/modernities”, “modernism” and “modernization” to make sense of what took place in both European and non-European societies since the Enlightenment and the rise of capitalism and colonialism.² From Talcott Parsons through Daniel Lerner, Wilbert Moore, W.W. Rostow, David Apter, Daniel Bell, and Charles Taylor, to their subaltern and post-colonial critics, such as Partha Chatterjee and Dipesh Chakrabarty, Cooper traces the way modernity was constructed, used, and de-constructed.³ He convincingly argues that a major part of the problem is that the category has been conceived as a “package,” or “a bundle of social, ideological, and political phenomena whose historical origins lie in the West.”⁴ These were supposed both to reflect actual realities and to act as “causal agent” for change, or to serve as both analytic and normative categories.

The packaging inherent in modernization theory also concerns Timothy Mitchell in his impressive study of Egyptian history in the middle of the twentieth century.⁵ Analyzing the causal chain that produced a historical tragedy in Egypt during the early 1940s, he examines the fascinating co-occurrence of several ostensibly unrelated events: the German forces attacking from the west and the battle of al-Alamein (1942); the malaria-carrying mosquito invading from the south; the impact of the Aswan Dam height raising (1933) on the irrigation network; the consequent dramatic

² Frederick Cooper, *Colonialism in Question: Theory, Knowledge, History* (Berkeley: University of California Press, 2005), 113–149.

³ *Ibid.*, 117–122.

⁴ *Ibid.*, 113.

⁵ Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (Berkeley and Los Angeles: University of California Press, 2002), 19–53.

increase in the use of fertilizers to replace the river alluvium; the war having cut fertilizer supplies from Germany, and the subsequent fall in food production; and finally, the weakening of the population's immune system due to malnutrition and famine, which raised the death toll tremendously.

Mitchell insists on the commensurability of human and nonhuman factors that linked those hydraulic, chemical, military, political, etiological, and mechanical processes. He is able to show that events in these spheres were not historically separate, but in fact affected one another at the social level. Although these seemed "to involve very different forces, agents, elements, spatial scales, and temporalities," they indeed "shape one another, yet their heterogeneity offers a resistance to explanation." For Mitchell, the problem is that social theory attributes a passive, minor role to the non-human elements in comparison to the human ones when offering explanations that involve agency.⁶

Mitchell argues that the human-nonhuman interactions he identifies belong "to some of the most profound transformations of the modern era," but have nonetheless been inadequately studied and explained by social science. It is here that he addresses the package of the "sovereign narrative" of modernity, which universalizes "the culture and power of the West." The story, emphasizes Mitchell, is told about every place, combining "rationalization, technological and social progress, the growth and transformation of production," forming "the foundation that makes social theory possible." Not surprisingly, these forms of explanation were molded into a universal social theory, embodied in Western history, just as the West's "power, wealth, and technical knowledge" became palpably evident. It is under these circumstances of all-encompassing dominance, that critics of universal modernization theory challenged the singularity of "modernity."

The concept of "multiple modernities," as suggested by S.N. Eisenstadt, was later recast by subaltern and postcolonial writers as "colonial modernities," only to be rejected by other critics of the theory. For one, Cooper, who argues that the concept of modernity is flawed even for describing and explaining its European prototype,⁷ asserts that for non-European societies, it simply creates a false sense of "a consistent project" where what really exists is "messy histories." It has become, in his words, "a marker of Europe's right to rule, something to which the colonized should aspire but could never quite deserve"; because it is "an entire vision of change that continues to condemn Africans and Asians to the role of "catching up," the critique of modernity among subaltern thinkers "seethes with resentment and longing."⁸ This view of sub-

⁶ Citations in this and the following paragraph are from *ibid.*, 27–29.

⁷ See, for example, Cooper, *Colonialism*, 143.

⁸ *Ibid.*, 115.

altern reaction to modernization theory is echoed and reaffirmed in a recent defense of post-colonial studies by one of its leading proponents, Robert J.C. Young.⁹

“The perpetrators of violence,” writes Young, “forget far sooner than those subjected to their power.”¹⁰ With Derrida, he collapses the study of the past into the activism of the present, arguing that “there will always be something ‘left over,’ and in that sense, the postcolonial will always be left over.” Thus, both the “resentment and the longing” of which Cooper speaks, are driven by the “unfinished business,” the ever-present remains of the colonial past, which the postcolonial is in many ways all about. That is, in Young’s words, “the continuing projection of past conflicts into the experience of the present, the insistent persistence of the afterimages of historical memory that drive the desire to transform the present.” As we shall later observe, this leads Young to diverge from other postcolonial writers in defending the record of some empires, including the Ottoman, for their putative—and, we might add, romanticized—tolerance of diversity.

In a way, Young was responding to criticism from writers such as Cooper, who rejected much of the postcolonial critique of the modernism-colonialism package. Having pronounced “the vanishing analytical utility” of modernities in the plural, another subaltern favorite, Cooper argues that allowing a variety of “packages,” rather than unpacking the “package,” gives an “artificial coherence to the concept of modernity”¹¹ and separates it from the realities of human life, that in this volume we would call practices. Yet, he clearly understands the full implication of the post-colonial criticism leveled at modernization theory, as it seeks—and partly at least succeeds—to cast fundamental doubts on the way we think about history by “destabilizing our supposedly universalistic, self-confident assumptions about the use of reason to understand the world and change it.”¹² Thus, Cooper strives to retain a modicum of reason, advocating that we need “to make distinctions, and condemning the systematic [i.e., modern] and celebrating the messy [i.e., traditional] will not help us make them.”¹³

However, in line with the modest and pragmatic substitutes for the powerful analytical categories that have seemingly dissolved, Cooper offers only a mild alternative. Seeking to distance himself from an iconoclastic position, he asserts that his purpose “has not been to purge the word *modernity* and certainly not to cast aside the issues that concern those who use the word.” Instead, he counsels

⁹ Robert J.C. Young, “Postcolonial Remains,” *New Literary History*, 43 (2012): 19–42.

¹⁰ *Ibid.*, 21.

¹¹ Cooper, *Colonialism*, 116–117.

¹² *Ibid.*, 122.

¹³ This is also in his criticism of James C. Scott’s rejection of the role of the state and “high modernism.”

a historical practice sensitive to the different ways people frame the relationship of past, present, and future, an understanding of the situations and conjunctures that enable and disable particular representations, and a focus on process and causation in the past and on choice, political organization, responsibility, and accountability in the future.¹⁴

If we understand this correctly, he issues a call for a down-to-earth study of practices, of how things happened according to retrievable historical evidence in a socio-cultural context and with awareness of the different perspectives that inevitably exist in the interpretation of events and processes, and of human experience.

For our purposes in this volume, Cooper's critique of modernization theory proves quite useful, as is his advocacy for what social, cultural, and economic historians have been attempting to do all along, that is, study practices within local context. It is with the reforms and deep changes that occurred in the societies of the Middle East and North Africa from the seventeenth to the twentieth centuries that we are concerned here. These periods of history would normally be called "early modern" and "modern," but we here wish to note our attempt in this volume to rethink the "modern" and prevent it from "hijacking" the notions of change and of meaningful, profound transformation in non-Western societies. But as we strive to better understand those transformations, we need to establish more precisely and perceptively the role of the state in initiating, implementing, or opposing reforms, and to address the very nature of "the state" and its relation to the various elites in the Middle Eastern and North African societies investigated in this volume.

The Ottoman Empire figures prominently in two aspects of the debate over multiple modernities: one is the issue of governmentality, the other is the conversation about empires versus nation-states. On both these issues, the chapters of this volume, in most cases, will cast doubt on the way the reforms and the sea-changes that were visited upon the regions of the Middle East and North Africa have been discussed in the literature thus far. The accounts offered by the contributors point to the fragility of those processes, to the limits of power, both imperial and local, and to the malleability and fluidity of the changes in concept, practice, and social norms. In that sense, we are more in line with "soft power" notions, less with the "grand theory."

Indeed, "modern governmentality" has been one of the constitutive features of modernity as it emerged from the Enlightenment era.¹⁵ However, it is precisely here that the Ottoman Empire diverges from the temporal pattern of the package model for modernity, which is the British Raj in India, where the imperial power considered "the institutions that defined the subject in relation to the state" as all important. These included "the census, the cadastral survey, and more generally the collection

¹⁴ Ibid., 149.

¹⁵ Cooper, *Colonialism*, 122.

of knowledge that defines a “population” and can be used to maintain surveillance and superintend social change.”¹⁶

The Ottomans conducted land, population, and revenue surveys from the late fifteenth century, keeping detailed records of taxes and customs that are available in the archives they maintained, now at the disposal of researchers from all over the world. It is certainly true that the *Tanzimat* reforms (roughly from the 1830s to the 1880s) took these to a different and far more coherent level, but those reforms fed on a long and rich tradition of state record keeping. As will be shown, the roots of many nineteenth-century reforms can be traced back to the eighteenth century. Another view of the *Tanzimat*, which draws on earlier writings by Bernard Lewis and others, sees the nineteenth-century reforms as motivated by the desire to enhance the power of the state and the central government in Istanbul. Thus, in a recent article, Baki Tezcan argues convincingly that the *Tanzimat* deliberately destroyed the old institutions that had contained sovereign power—mainly the Janissaries and the *ulema*-trained legal establishment—in order to facilitate sultanistic authoritarianism.¹⁷ In that sense, he regards those efforts at modernization as “undemocratic.”

The other aspect of the debate over multiple modernities is the representation of empires vis-à-vis the nation (or national)-states that succeeded them. Faced with the enormous cost in human life, suffering, and economic loss caused by the creation of such states on the ruins of empires, and often the continuing cost exacted for maintaining these entities, some anti-imperialists and anti-colonialists have revised their earlier views on the merit of that transition. A prominent example is Robert Young, who recently called for “some forms of empire to be re-examined in at least one respect: empire’s structure of government was necessarily organized around the accommodation of diversity, albeit according to an imperial hierarchy.”¹⁸

Young contrasts that capacity of empires with the dismal record of nation-states, whose driving nationalism was often based on “an intolerant principle of autonomous ethnic or cultural homogeneity that tended to disallow heterogeneity and difference.”¹⁹ When he comes to re-examine “some forms of empire,” the Ottomans and Mughals are his picks, and he praises their concept of *dhimma* as the apogee of tolerance and acceptance of diversity.²⁰ However, Young idealizes and romanti-

¹⁶ Ibid., 143.

¹⁷ Baki Tezcan, “The New Order and the Fate of the Old—The Historiographical Construction of an Ottoman Ancien Régime in the Nineteenth Century,” in *Tributary Empires in Global History*, ed. Peter Fibiger Bang and C.A. Bayly (Palgrave Macmillan: London, 2011), 74–98.

¹⁸ Young, “Postcolonial Remains,” 31.

¹⁹ Ibid. On this, see also, Ehud R. Toledano, “Turkish Nationalism and Islamic Faith-Based Politics: Historical and Contemporary Perspectives,” in *Nation-State and Religion: The Resurgence of Faith*, ed. Anita Shapira, Yedidia Z. Stern and Alexander Yakobson, Vol. II (Brighton: Sussex Academic Press, 2013), 101–118.

²⁰ Young, “Postcolonial Remains,” 33–35.

cizes the *millet* system, insisting that it rested on a fundamentally ethical structure, in contrast to Wendy Brown's convincing argument that tolerance is less an ethic or a virtue than a structure and discourse of power and a pattern of governmentality.²¹ Indeed, the changing positionality of Ottoman governments towards the ethnic and religious minorities in the Empire can be easily traced to the way they perceived their own standing domestically and on the world scene: their tolerance tended to increase when their self-confidence increased, and vice versa.

This, and other types of evidence relating to the "modernity package," enable us to cast serious doubts on the view, grounded in mid-twentieth century modernization theory, that the Ottoman Middle East could only find its way to modernity through its encounter with the West. At the same time, they also raise questions about the opposite view, which suggests an internal impetus for transformation and blames its failure on Western encroachment. This volume suggests a third alternative. Its chapters offer an analysis of dynamics and underlying systems that precipitated, enabled, or hampered change. The themes engaged with range from the inherent instability of the Ottoman governing elite, through the shifting configurations of the legal system, to the unending search for appropriate means to measure time and efficiency.

From the early 1950s onward, a new paradigm prevailed in the study of Middle Eastern and Ottoman history. Based on Weber's concepts of rationalization, secularization, and bureaucratization as hallmarks of modernity, works such as Gibb and Bowen's *Islamic Society and the West*, asserted that after its medieval heyday, Islamic society declined, going around in interminable Khaldunian cycles between authoritarian centralized rule and social breakup, until its traumatic encounter with the West in the late eighteenth century.²² Only after it had crossed swords, virtually and ideologically, with the West, did Islamic civilization acquire enough motivating force and focused energy to engage with the challenges of the new world order. During the nineteenth century, adherents of this paradigm suggested, the political elites of the region began to take the necessary measures for change, including urbanization, industrialization, universal access to education, and increased political participation.

Before we go any further into the argument, we should note that terminology is one of the main stumbling blocks in Gibb and Bowen's attempt to analyze the transformation of the Ottoman and post-Ottoman worlds.²³ We would now prefer to use

²¹ Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton, NJ: Princeton University Press, 2006).

²² H.A.R. Gibb and Harold Bowen, *Islamic Society and the West* (London, Oxford University Press, 1950).

²³ Other examples include Manfred Halpern, *The Politics of Social Change in the Middle East and North Africa* (Princeton, NJ: Princeton University Press 1963), and Daniel Lerner, *The Passing of Traditional Society* (New York: Free Press, 1958). For a summary of Modernization Theory's approach to the region see: Raymond Hinnebusch, "Authoritarian persistence, democratization theory and the Middle East: An overview and critique," *Democratization*, 13:3 (2006): 373–395. See also Dror Ze'evi,

Marshall Hodgson's "Islamicate" rather than "Islamic" to emphasize civilizational aspects rather than religious ones; to refer to "societies" in the plural instead of "society" in the singular; and to point out the fact that both on the spatial axis and on the temporal one, there are many different social structures, some of them more amenable to change and some more resistant to it.

This modernist attitude, which essentialized pre-modern Middle-Eastern societies and objectified them as unchanging, backward, and despotic, met with indignant resistance from scholars better acquainted with the region, its culture, and its heritage. Thus, in several seminal articles, Albert Hourani claimed that the rise of a merchant class and a group of urban notables in the eighteenth century, preceding the onslaught of the West, should be viewed as an autochthonous social development, comparable to the rise of the urban patriciate in Renaissance city-states.²⁴ Seen in this light, internal social change could be interpreted as teleological transformation, indicating a shift towards modernization and devolution of sovereignty emerging from within the Islamic world. If that is the case, then we should regard Western impact, whether in the form of direct Colonial conquest or indirect influence, mainly as an interruption. Instead of carrying Middle Eastern societies over the threshold of modernity, that interruption impeded their independent move towards modernity and replaced it with a warped hybrid model that was doomed to fail.

Through the writings of Hourani and like-minded contemporaries, this Euro-centric assumption, held by modernization theorists in the middle decades of the twentieth century, gave way to a more nuanced view of the modernization process. As already mentioned, this new view prompted sociologist Shmuel N. Eisenstadt to shun the uniquely Western model of modernity, and to suggest instead a concept of "multiple modernities" in which this view of the West as a singular source and model for modernization is replaced by a more multifaceted method.²⁵ His approach postulates many roads leading to what we define as modernity and, furthermore, that there are many types of modernity which are incommensurate with the Western model. While using the terminology of modernity and subscribing to some of its utopian aims, Eisenstadt suggests that quite a few societies outside Europe have arrived at it through a differently; they sometimes substituted the Caliphate or rule of the Sharica, for the nation-state or the representative system of government.

In books such as Sami Zubaida's *Islam, The People and the State* and Hisham Sharabi's *Neopatriarchy*, this concept of multiple modernities, presented as a skewed

"Back to Napoleon: Thoughts on the Beginning of the Modern Era in the Middle East," *Mediterranean Historical Review*, 119:1 (June 2004): 73–94.

²⁴ Albert Hourani, "Ottoman Reform and the Politics of Notables" in *The Emergence of the Modern Middle East* ed. idem. (London, 1981), 36–66. See also Albert Hourani, *The Ottoman Background of the Modern Middle East* (London: Longmans for the University of Essex, 1970).

²⁵ Shmuel Noah Eisenstadt, "Multiple Modernities," *Daedalus*, 129:1 (Winter 2000): 1–29.

fusion of internal developments and external impact that results in illiberal modernities, has reached its culmination.²⁶ Zubaida, for instance, shows how the incorporation of latter-day political party structures and twentieth-century means of communication, recruitment, and mobilization, along with an underlying ambivalence about the nation-state and democracy, have enabled both a *Shi'ite* resurgence under Khomeini's Islamic Republic and a Sunni radical insurgency to become part and parcel of the modern world. We should regard them as thoroughly modern despite the fact that they are far removed from the classical understanding of modernity as secularizing and individualizing.

Yet, for all its insistence on a localized modernity and on its non-European attributes, the new approach did not succeed in completely superseding the older one. The strands of transformation in the Ottoman world are still almost impossible to disentangle from their external origins and there is no way to tell how much of the shift had to do with internal developments and how much with Western impact. The decades-long scholarly argument for an internal dynamic that would have led to some kind of modernity has ended with only partial success. Instead of convincingly proving that modernity emerged from within, a shadow has been cast on the idea of European modernity. Ample evidence now exists to show that it too was born of an intricate series of interfaces with non-European civilizations.

Today, a century after the emergence of classical modernization theory, it is high time to leave the old debate about origins behind us and focus on analyzing some of the local dynamics that have contributed to the pace and direction of change and ultimately to modernization. Our question is no longer "how did modernity come about?" or "what were the forces impelling the region towards modernization?" Instead, we would like to move the emphasis of research to the *mechanics of change*, to those innate elements within Middle Eastern societies that were amenable to transformation. In order to do so we must constantly shift between *emic* and *etic* approaches.

The terms "etic" and "emic" are borrowed from the study of linguistics. While the field of phonetics is engaged with the study of sounds produced during speech, phonemics deals only with the phonetic differences that are meaningful within a certain speech culture. Thus, while phonetics are bound to differentiate between an unvoiced "f" and a voiced "v," or between the diphthong "w" and the consonant "v," for native speakers of some languages these differences will not be meaningful in terms of the content they need to convey. For these native speakers each of these couples represents one phoneme. In the study of anthropology and history, these terms refer to the difference between things as studied by scholars from outside a certain culture (etic), and the same things as interpreted by members of that culture (emic). In other words, etic would refer to analytical categories employed in (often Western) research,

26 Sami Zubaida, *Islam, The People and the State: Political Ideas and Movements in the Middle East* (London: I.B. Tauris, 1993); Hisham Sharabi, *Neopatriarchy* (Oxford: Oxford University Press, 1992).

and emic would be the analytical categories through which the members of the target culture understand and explain their actions.

Echoing such a preference, Frederick Cooper asserts that “scholars should not try for a slightly better definition so that they can talk about modernity more clearly. They should instead listen to what is being said in the [emic] world. If modernity is what they hear, they should ask how it is being used and why...”²⁷ In that spirit, the group of articles presented here seeks to interpret change in Ottoman and Middle-Eastern societies in its own terms, and from the perspective of the local actors themselves. The chapters in this book examine the socio-political, economic, and ideological structures that created the preconditions for transformation, and the forces that opposed or hampered such change. “Unpacking” here corresponds with current language in socio-cultural history to mean the opposite of what Cooper calls “packaging” of modernity/ies, that is, to separate components of change, understand how they worked, and interpret them historically within their local contexts. We have, therefore, divided the chapters into two sections: the first breaks up the main social, political, and economic unit of networking within the Ottoman Empire, i.e., the urban elite household; the second addresses the complex relationship between law and culture, looking at how the legal system, conceptually and practically, undergirded socio-cultural aspects of life in Middle Eastern societies.

Since becoming modern, particularly in the Middle East, was a process most often initiated and enforced from the top downwards by political and intellectual elites, a substantial part of this volume addresses the dynamics of Ottoman-era upper and ruling classes. The specific set of institutions, practices, and mindsets that has been referred to in the literature as modernity achieves *masse critique* only after the rise of Mehmet Ali in Cairo and Mahmud II in Istanbul, both during the first half of the nineteenth century. However, as we have mentioned above, some of the preconditions for change, such as an emerging need for economic security and a contest for sovereignty, can be detected among elite circles already in the previous century. We therefore devote special attention to the Ottoman elites of the seventeenth and eighteenth centuries both at the center and in the provinces.

Latter-day historians of the later Ottoman period emphasize the importance of households as basic building blocks of the elite, crucial institutions for elite socialization, and launching platforms for political careers.²⁸ Nonetheless, in the first chapter of this section, Dror Ze’evi and Ilkim Buke look at this from a networks perspective.

²⁷ Cooper, *Colonialism*, 115.

²⁸ See, for example, Ehud R. Toledano, “The Emergence of Ottoman-Local Elites (1700–1800): A Framework for Research,” in *Middle Eastern Politics and Ideas: A History from within*, ed. I. Pappé and M. Ma’oz (London and New York: Tauris Academic Studies, 1997), 145–162; and idem., “The Arabic-Speaking World in the Ottoman Period: A Socio-Political Analysis,” in *The Ottoman World*, ed. Christine Woodhead (Abingdon, UK: Routledge, 2012), 453–466.

Their contribution focuses on a lesser-known aspect of household politics: centuries of constant banishments, demotions, and confiscations initiated by the imperial court in order to weaken the elite household structure, have strengthened wider social networks. Frequently, when a pasha was banished or demoted, his property was confiscated and the entire household dispersed. This created a sense of urgency and instability, which, in turn, led to the emergence of multi-layered and constantly shifting networks in order to safeguard the core of the household and preserve at least some of its economic wealth in difficult times. From a long-term perspective, such complex networks may have gradually replaced the bilateral relationship between each household and the imperial court, enabling the formation of a separate power base outside the palace.

Using a micro-historical, biographical approach, Michael Nizri also examines household-based structures through a detailed analysis of one of the key *grandee estates* at the turn of the seventeenth century. Feyzullah Efendi, scholar, head of the *ilmiye* corps (Şeyhülislam), and one of the Empire's main power brokers, deployed a sophisticated set of economic measures to preserve his power and to safeguard his assets. His frequent use of *vakf* (Arabic, *waqf*)—familial and charitable endowments protected by the state through *Shari'a* law—enabled him to create a safe legal haven for some of his property, and thus to survive periods of adversity and insure the future of his household.

Basing her study on probate inventories (*tereke*s) and other archival sources, Tsameret Levi-Daphni reconstructs the physical and socio-political environment in which Mustafa Ağa, a local governor (*Voyvoda*) in Diyarbakır, managed his household affairs in the eighteenth century. Focusing on status symbols, elite markers and familial connections, her study redraws the boundaries of the governing elite, analyzes its economic foundations, and examines its internal dynamics. The study also differentiates between two levels of the governing elite—'great' pashas, whose careers arcs could reach the Imperial Divan, or even the Grand Vezirate, and 'localized' pashas who exchanged the prospect of reaching the heights of officialdom for a quiet life in one of the provinces and a chance to bequeath their property to wives and descendants.

The chapters in this volume are also inspired by insights and methods garnered from modern social history. While traditionally the study of elites and of top-down transformation relies on travelogues, diplomatic correspondence, and state archives—the main depositories for upper-class sources—social history, and subaltern studies in particular, chose to uncover and explore a series of more obscure archival sources such as court registers and police investigation protocols. This was bolstered by the inclusion of social strata outside the elite. Merchant and artisan classes and even the urban masses and the peasantry are thus examined as an important component in social and political transformation, both as political forces to reckon with in terms of *vox populi*, and as social groups echoing, multiplying and changing the direction of dynamics initiated from above.

Laying the ground for a more sophisticated approach to the link between ideology and long-term socio-political developments in Muslim societies, Nimrod Hurvitz draws our attention to the importance of religious schools of law (*madhhabs*) as social movements. For generations these institutions had been studied mainly as ideological constructs, with an emphasis on their preferences for certain sacred sources for jurisprudence, and their compilation of sets of specific injunctions and laws based on these sources. Scholars rarely touched on the role of such schools as hubs for social grouping. Yet throughout the centuries almost the entire Sunni Muslim world defined itself through adherence to one or more of these schools, and in many places this identification became the main vehicle for social organization. The same is true for the Shi'a's social function. While the theological and legal differences between the Shi'a and the mainstream Sunna have been debated by scholars *ad infinitum*, the inherent attributes and underlying factors that transformed Shi'a groups into efficient organizing tools for social and political action were largely ignored. Shifting our gaze from the rarefied discussions of ideology to socio-cultural components that served as a rallying call for the masses may yield a new understanding of social dynamics in Islamicate societies.

Jurists charged with producing legal opinions (*muftis*, compilers of *fatwas*) in the Ottoman Empire, provide another example of an institution based on ideological foundations with direct linkage to social and political dynamics. These jurists and their world are examined in Guy Burak's chapter on "Contending Visions of Mufti-ship." Through a study of the seventeenth century scuffle for the position of mufti in the city of Damascus, Burak shows that while on the overt level the issue at hand was an ideological one, concerned with the range of permissible interpretations within the Hanafi School of law, the actual drama was political. Both sides of the debate were preoccupied with the balance between the role of a city's mufti as a scholar offering unfettered legal advice to society on the one hand, and the institution's position as a formal establishment for state-appointed members of the bureaucracy on the other. Throughout the period, the debate concerning the appointment of muftis constantly redefined the relationship between the judicial and executive functions of the Ottoman government.

Moving on to the nineteenth century and the *Tanzimat* reforms, Omri Paz examines the initiation of the first modern Ottoman police force. Based mainly on an analysis of court records and penal codes, Paz investigates the evolving relationship between police force, the state apparatus, and the subjects/citizens. During the era of the *Tanzimat* these three corners of the enforcement triangle were constantly shifting: the state moved away from its minimal role in previous centuries, and into the position of nanny state—protector of society and omnipresent overseer of political activity within its borders. At the same time the police force gradually differentiated itself from other foci of power and sought a new definition of its relationship with the subjects, who, in their turn, now expected equality before the law and safeguards against breach of certain inalienable rights. This constantly shifting ground made the state

realize the necessity of protecting members of the police force against legal prosecution, and concomitantly to demand accountability and protect its subjects from abuse by an unchecked police force.

Finally, the two closing chapters address two of the tools through which change was mediated and in a way measured, calibrated, and practiced—time and recording. “The Ottoman ‘clock-time’ of the late eighteenth century,” writes Avner Wishnitzer, “was indeed very different from the uniform and empty physical entity which is usually meant by the term.” He further concludes that while clocks were in wider use, they measured time that was embedded in the real world of political, religious, and cultural meanings. Liat Kozma, on the other hand, considers how changes in the formation of a centralized Ottoman-Egyptian state in the second half of the nineteenth century were reflected in the archives. She moves from the micro level of a particular suicide case of a Tunisian Jewish trader in Alexandria to the macro consideration of a major shift in bureaucratic practices. Looking at how a case was handled and recorded by the authorities tells more compellingly the story of what would otherwise be considered the modernization of Ottoman Egypt.

Part I: **Unpacking Society**

Dror Ze'evi and Ilkim Buke

1 Banishment, Confiscation, and the Instability of the Ottoman Elite Household

Historian Jack Hexter once suggested that pre-modern states should be thought of as objects rather than subjects. The state, he famously claimed, should not be regarded mainly as an actor in the public arena, as we tend to see it nowadays. Understanding it as primarily a cluster of opportunities to get money and power or, in his words: “essentially what is politically up for grabs,” would be more useful for the historian.¹ Shifting our gaze from the Ottoman state as a unified political actor to those who contended for its sometimes toxic plums—the offices of vezirs of the *divan*, governorships of major provinces and high-ranking army command posts—this chapter seeks to uncover their strategies and the resulting social and political structure of the elite.

Focusing on networks and patronage relationships in the highest echelons of the Ottoman state we examine Ottoman practices of banishment, dismissal, and confiscation of property that became pervasive after the sixteenth century. Our contention is that such practices of making and breaking were instrumental in transforming the Ottoman governing elite, which was based on a unique form of slavery and on direct allegiance to the sultan, into a complex interlaced social network. In subsequent centuries this network would further develop into a reform-oriented social class.

1.1 Who Were the Pashas?

Quite a few contenders for high office started their careers as slaves or quasi-slaves brought to the imperial palace. Having graduated from the palace school system they had a first taste of state power as members of the sultan's entourage, known to contemporaries as “Ağas of the Stirrup” (*rikâb-ı hümayûn ağaları*). Young servants who distinguished themselves in the palace service were awarded positions in the sultan's personal privy chamber, starting the climb up the career ladder. A few of them went on to command elite troops and head branches of government. During the seventeenth and eighteenth centuries—the main timeframe of this study—a growing number of contenders joined this elite group from outside the imperial household. Some were recruited from the retinues of other pashas and palace officials, a few were converted renegades from foreign armies who found shelter at the Ottoman court, and a trickle

1 J.H. Hexter, “The Loom of Language and the Fabric of Imperatives: the Case of Il Principe and Utopia,” in *The Vision of Politics on the Eve of the Reformation: More, Machiavelli, and Seyssel*, ed. idem. (London, 1973), 188.

even climbed up from the ranks of the *reaya*. As time went by more and more of the pashas were sons of Ottoman dignitaries, although all of them formally accepted *kul* status, which officially defined them as slaves of the realm. This liminal state of quasi-slavery continued on to the late centuries, and persisted even when only a small minority among the recruits for palace service were actual slaves, purchased in markets or captured in battle.

What were the rules of the game? What enabled a young recruit to position himself for high office? How did these ranking pashas socialize, advance, accumulate power and property, survive in a very competitive environment and, indeed, perpetually reproduce the same slavery-based system? In his famous book on French court society at the time of Louis XIV Norbert Elias nails down these questions eloquently:

What distribution of power, which socially instilled needs, which relationships of dependence brought it about that people in this social field constantly converged over generations in this figuration, as a court, as court society? What demands were transmitted from the structure of court society to those who wished to rise or merely to survive within it?²

The Ottoman governing elite was sharply different from the one Norbert Elias had in mind and its mechanisms for transmitting power and status were much more complex, formally depending, as it were, on non-hereditary status. Another historian of French aristocracy, Marc Bloch, once conjectured that European nobility was defined by its “transmissible legal status”. A formal legal definition confirmed its superiority over the other estates, and the same legal framework enabled the near-automatic transmission of rank and privilege from father to son.³ Being an *ordre juridique*, is what made the European feudal nobility so powerful. Yet in the Ottoman case, the legal situation was almost the opposite. Court society stood in a legal no-man’s-land between slaves and freeborn subjects and, in principle, their status was strictly *not* hereditary, although, with the sultan’s consent, their offspring could have an edge over others while being inducted into the imperial service.⁴ Although ostensibly subject to an ill-

² Norbert Elias, *The Court Society*, trans. Edmund Jephcott (Pantheon, 1983), 39.

³ In Hillay Zmora, *Monarchy, Aristocracy, and the State in Europe, 1300–1800* (London: Routledge, 2001), 23. One of the rights of nobles in France was the right to hunt, which other classes were denied. It is interesting to note that in the Ottoman context there were no such restrictions placed on the *reaya*[c.f. Douglas S. Brookes, *The Ottoman Gentleman of the Sixteenth Century: Mustafa Ali’s Mevā’idün-nefā’is fī Kavā’id’l-Mecālis* (Boston: Harvard University, 2003), 38–9.

⁴ An interesting document, that hints at the way the palace dealt with relatives of deceased officials is *Başbakanlık Arşivi*(BOA), Maliyeden Müdevver (MM) defter 900, no. 7537, erzak tayinat defteri: “Sadr-ı ali ile vezir-i kyahmakam ve kaptan paşalara ve defterdarlara kazaskerlere ve sultanlara sair isimleri muharrer muhtelif cemaatlerden saray mensubinine ve el öpmeye gelen hanzadelere yevmiye ve aylık olarak tahsis kılınan erzak ve me’kulat tayinatlarının nevi ile mikdarını”. This should be looked into more carefully. See also defter 18739, no. 9001, in which concern is shown for retired officials with no property.

defined imperial legal code, they were in fact an *ordre hors jus*—a group defined not by a clear set of laws concerning hereditary status but rather by its being outside the official legal system, opaque as far as the law was concerned. The question, therefore, is how a group manages to reproduce itself so efficiently and transmit its power without the benefit of transmissible legal status, and against a monarch determined to prevent it.

During the previous century, the historiography of this question developed considerably. From Lybyer's (and later Gibb and Bowen's) description of a successful ruling elite composed of Christian slaves later "contaminated" by Muslims from religious institutions, to the more intricate career paths suggested by Itzkowitz, and on to studies of elite households which offered fresh insights into the workings of the elite. These studies, pioneered by Rifaat Abou-El-Haj and Metin Kunt in the late 1970s were later taken on by a large group of social and cultural historians including Ehud Toledano, Jane Hathaway, Tülay Artan, and others. Their studies have shown us the importance of the household as an institution geared to all the purposes mentioned above—from socialization into the elite, through accumulation of property, to the creation of conditions for hereditary transmission of power and privilege. Households based on blood-relations as well as political networks and slave accumulation, became an all-encompassing explanation for the survival and continuation of this *ordre hors jus*.⁵

A quick statistical overview suffices to give us an indication that the emergence of households in the Ottoman context seems real and tangible from an early date. In a survey based on Mehmet Süreyya's *Sicill-i Osmani*, we can see that, contrary to

5 A.H. Lybyer, *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent* (New York: AMS Press, 1978). H.A.R. Gibb and Harold Bowen, *Islamic Society and the West: A Study on the Impact of Western Civilization on Moslem Culture in the Near East*, Vol.2 (Oxford University Press, 1962). Norman Itzkowitz, "Eighteenth Century Ottoman Realities" *Studia Islamica* 16 (1962): 73–94. Rifaat Ali Abou-El-Haj, "The Ottoman Vezir and Paşa Households" *Journal of the American Oriental Society*, Vol. 94, No. 4. (Oct.–Dec., 1974): 438–447. Rifa'at Ali Abou-El-Haj, *The 1703 Rebellion and the Structure of Ottoman Politics* (Nederlands Historisch-Archaeologisch Institut Te Istanbul, 1984). Metin Kunt, *The sultan's servants: the transformation of Ottoman provincial government, 1550–1650* (New York: Columbia University Press, 2001). Idem, *Kulların Kulları*, vol. 3 (Boğaziçi Üniversitesi Hürmaniter Bilimler, 1975) 27–42. Ehud R Toledano, "The Emergence of Ottoman-Local Elites (1700- 1800): A Framework for Research," in *Middle Eastern Politics and Ideas: A History from within*, ed. I Pappé and M Ma'oz (London and New York: Tauris Academic Studies, 1997), 145–162. Jane Hathaway, *The Politics of Households in Ottoman Egypt: The Rise of the Qazdağlıs* (Cambridge: Cambridge University Press, 1997). Tülay Artan, "From Charismatic Leadership to Collective Rule: Introducing Material on the Wealth and Power of Ottoman Princesses in the Eighteenth Century," *Dünü ve Bugünüyle Toplum ve Ekonomi* 4 (1993): 53–94. Tülay Artan, "Journeys and Landscapes in the Datça Peninsula : Ali Agaki of Crete and the Tuhfezâde Dynasty", *History of Crete*, (Rethymnon: University of Crete) (forthcoming).

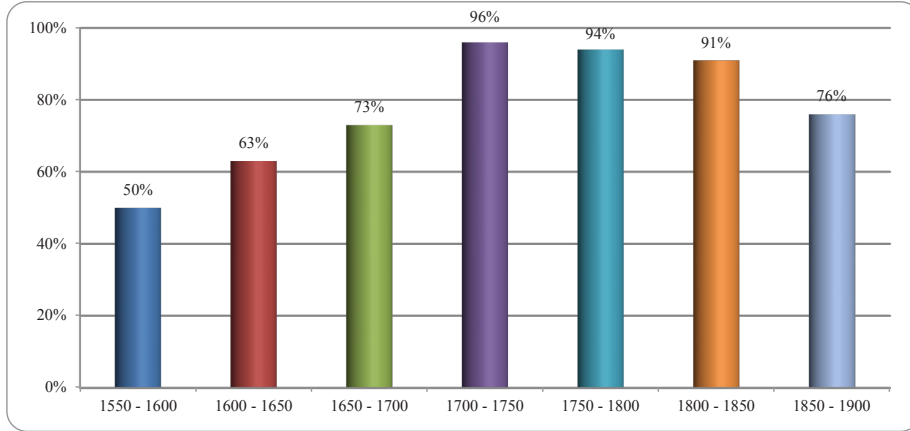


Figure 1.1: Pashas with family relations mentioned by period

received wisdom, almost all pashas in the seventeenth and eighteenth centuries had blood relatives in the service (fathers, sons, brothers, uncles, or nephews).⁶

Even if we correct the chart downward to account for brothers or nephews also recruited as slaves (it was not uncommon to seek out relatives of successful *devşirme*

⁶ The study is based on Mehmet Süreyya's, *Sicill-i Osmani* (Tarih Vakfı Yurt Yayınları, 1996). The total number of Pashas studied so far is 150. Since there are thousands of biographies of a wide range of people in *Sicill-i Osmani*, our sample was chosen according to two criteria: rank (only major pashas) and length (above 15 lines of biography). The distribution by periods is as follows:

Periods	Number of Pashas Studied
1450–1500	2
1500–1550	4
1550–1600	2
1600–1650	8
1650–1700	15
1700–1750	23
1750–1800	32
1800–1850	22
1850–1900	42
Σ	150

(The imbalance in numbers reflects two factors: the bias of the source towards the modern period, and the growing number of pashas in the realm)

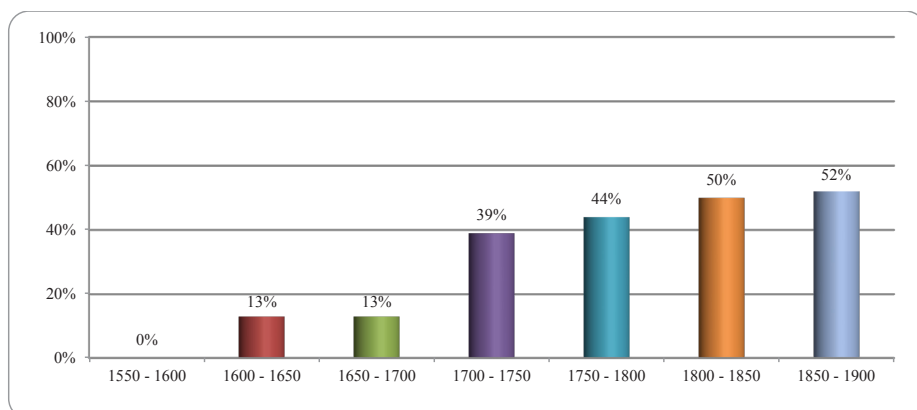


Figure 1.2: Pashas whose fathers are mentioned by period

recruits in their villages and bring them in), and for people who entered as *kul* recruits from the outside and established their own dynasties (that is, those who have only descendants and lateral relations, not fathers in the service of the state), the evidence for family links is still overwhelming.

Around half of the entries from the eighteenth century mention a father's name and occupation, informing us that the father of the subject of the biography was part of the *askeri* class. The shift here is striking. While in the early periods, until the late seventeenth century, most pashas were not sons of elite members; in the early eighteenth century we encounter a quantum leap, indicating that slavery was no longer the main source of manpower for the governing elite.

Our chart should perhaps be corrected upward slightly because the author of the biographical dictionary, Süreyya, tends not to mention the father's name if he does not already have an entry in the *Sicill-i Osmani*. When the father was not a senior official, but rather a medium-level functionary, and did not deserve mention in Süreyya's pantheon, the son's family origins were often omitted. Also, in many cases the father occupied a liminal place between the *askeri* and the *reaya*, reaching such status as head of guild or rich merchant. In future we may be able to correct these figures by adding information to the database from other sources.⁷

⁷ A few words about the source's bias. *Sicill-i Osmani* is biased towards sources written in Ottoman Turkish. Reading only the main Ottoman chroniclers, to the exclusion of others, including Arabic and Slavic language sources, blinds us to a great number of pashas and to countless beys who did not figure in this specific literature. It also means that biographies are much more detailed when the person in question was close enough to the imperial center to be mentioned by the main Ottoman sources. But in this case the bias works in our favor since this study engages with precisely these 'high-flying' pashas.

1.2 Households on Quicksand

In order to understand how these households functioned and how status was transmitted, we must shift our focus from quantitative to qualitative analysis. We have observed that while some households in the periphery were fairly stable dynastic structures, in which status passed from father to son or slave⁸ at least for several generations, the situation at the Imperial center was different. In the Ottoman heartland, where the most aggressive and sometimes violent competition for lucrative government positions took place, households were precarious social formations that could be erected or dismantled by the sultan's orders from one day to the next.

For one thing, the terminology is unclear. The terms for household—*kapı*, *dār*, *hâne*, are very seldom used by seventeenth- and eighteenth-century historians. A search for these terms in the main archives in Istanbul yields only a handful of references, and most of them apply the term “*daire*” which in pre-nineteenth century Istanbul meant something like “entourage”. The chronicler and bureaucrat Mustafa Ali, who discusses the behavior of slaves and servants in the household in many chapters of his famous book of manners, *Mevaidü'n-nefā'is*, uses almost exclusively the term “harem” (*haram*, *haremlık*) to refer to a grandee's household, whereas the term *kapı* (*kapu*) in his usage is restricted to signify either “gate” or “house,” as an equivalent of the Turkish word *ev*. Here and there the term *kapı* is used in official documents to describe the semi-formal set of institutions surrounding a pasha, which included guard troops and armed forces, animal drovers, a military band, and various household officials. It is our impression that for members of the Ottoman elite of the period the idea of a household was vague and its boundaries blurred.⁹

Apart from this difficulty in tracking down the terminology, it becomes immediately apparent that such household structures were subject to a harsh palace-driven policy of demotion, dismissal, banishment, execution and property confiscation. These measures seem to have created a game of Snakes and Ladders in which pashas were subject to a Sisyphean cycle of forfeiting their gains and properties, and starting anew several times during their careers. This policy, designed to keep as much power as possible in the hands of the sultan, was described early on by the perceptive Paul Rycaut, secretary of the British ambassador to the Ottoman court in the 1660s:

When I consider what little rewards there are for virtue, and no punishment for profitable and thriving vice; how men are raised at once by adulation, chance, and the sole favour of the

⁸ In most cases the son would initially begin with a lower status, that of *bey*, and only later rise to pasha status.

⁹ See, for example, Naima Mustafa Efendi, *Tarih-i Na'ima (Ravzatü'l-Hüseyn fi Hulasati Ahbari'l-Hafikayn)*. Trans. Mehmet Ipsirli, (Ankara, Türk Tarih Kurumu Yayınları, 2007–8), vol. III, 1387, vol. IV, 1681.

prince, without any title of noble blood, or the motives of previous deserts, or former testimonies and experience of parts or abilities, to the weightiest, the richest, and most honorable charges of the Empire; when I consider how short their continuance is in them, how with one frown of their prince they are cut off, with what greediness above all people in the World they thirst and haste to be rich, and yet know their treasure is but their snare; what they labor for is but as slaves for their great Patron and Master, and what will inevitably effect their ruine and destruction, though they have all the arguments of faithfulness, virtue and moral honesty (which are rare in a Turk) to be their advocates, and plead for them. When I consider many other things of like nature, (which may more at large hereafter be discussed of) one might admire the long continuance of this great and vast Empire, and attribute the stability thereof without change within its self, and the increase of Dominions and constant progress of its arms, rather to some super-natural cause, then to the ordinary Maxims of State, or wisdom of the Governors, as if the Divine will of the all-knowing Creator, had chosen for the good of his Church, and chastisement of the sins and vices of Christians, to raise and support this potent people.¹⁰

Rycaut captures the tension between the lures of high office and the temptation of amassing property on the one hand, and the precarious position that these pashas were placing themselves in on the other. Yet, in modern research about the household this fragility, this shaky status of the pashas' power base, has only been dealt with sporadically. We know little about the measures, tactics, and ploys used by the palace (and the practices used by political rivals) to curb the power of ambitious individuals. In consequence, we cannot really assess the relative strength of bonds within household formations, and the strategies they made use of to thrive and survive in the face of adversity.

In the following pages we observe some of these palace tactics, including dismissal, banishment and confiscation – the “snakes” of this political game – and their effect on the stability of the system. We will first describe processes of dismissal and banishment, often accompanied by partial or full confiscation, and then offer an assessment of their meaning for the pashas' careers and the endurance of their households. The following analysis is based on four types of sources: official documents in the main Ottoman archive in Istanbul (*Başbakanlık Osmanlı Arşivi*), chronicle-type histories compiled by Ottoman court historians, biographical dictionaries of high-ranking officials, and travel accounts.

¹⁰ Sir Paul Rycaut, *The Present State of the Ottoman Empire, Containing Maxims of the Turkish Politie, The Most Material Points of the Mahometan Religion, Their Sects and Heresies, their Convents and Religious Votaries, Their Military Discipline, With an Exact Computation of their Forces both by Land and Sea* (London: Printed for C. Brome, 1686), 2–3.

1.3 Dismissal and Banishment

A statistical sample of 150 pashas from all periods, based on the *Sicil-i Osmani*, demonstrates that the average career span of an Ottoman pasha, from first major appointment recorded, usually at the lower rank of bey or agha, to their death, was about 20 years. We should bear in mind, of course, that the sample is biased by the simple fact that it usually took years to reach pasha status, so most of those surveyed in this sample had to have been in the service for at least a decade to be included. Few pashas lasted unscathed longer than 10 years in a competitive court fraught with external war and violent internal competition. Exceptions could be found mainly among those who did not participate in the ‘great’ pasha game. Some generals and governors who opted for a more peaceful career, maintaining low-profile positions and keeping their distance from the hard competition for domination of the center, tended to have longer careers, although they too faced many challenges. The higher a pasha climbed up the ladder in the ‘great game’ of competing for plum jobs, the lower his chances of long-term survival. In the seventeenth century—even if we include the Köprülüs, an exceptional family, several of whose members served for much longer stretches of time as grand vezirs – the average time in office for a grand vezir was 1.75 years. If we exclude this family, the average falls to less than 1.5 years per term in office. During the eighteenth century the same trend continues. The majority lost their jobs through dismissal, demotion, banishment, or execution.

A simple count teaches us that 113 out of 150 pashas lost their job at least once during their careers, and with it, in most cases they were deprived of their income. When divided into 50-year periods we can see that the rate of dismissals remains stable, around 75%, from 1650 to 1900.¹¹ Again, if we take into account the fact that *Sicil-i Osmani* often omits such details, and that some pashas preferred to avoid competing for higher positions in order to lead less stressful lives, it seems that almost every aspiring pasha was dismissed, demoted or banished at least once, usually well into a flourishing career.

About 35% of the pashas in the sample are said to have been exiled. The actual percentage might actually be higher because we should take into account that some of the cases of banishment, mainly in the earlier stages of one’s career, were omitted from the official biography. The largest single group (33 pashas in this sample) was banished only once, but the majority (40 in this sample) were banished twice or more. When arrayed by periods the results are even more striking. In the late eighteenth century, the percentages rise dramatically, and this high level of banishments remains steady until

¹¹ From 1600 to 1650 the rate of dismissals per person is 87%, but the sample is small, and the period seems to have been even more hectic than later ones.

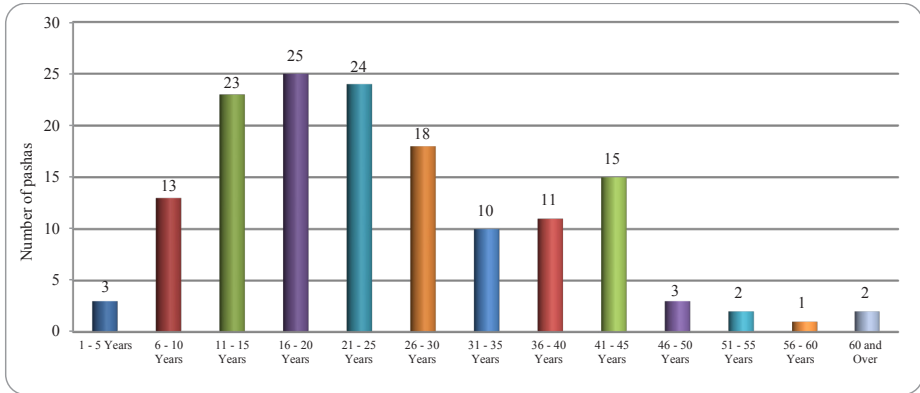


Figure 1.3: Average career span of Ottoman pashas

the *Tanzimat* period.¹² We should add to that the great number of pashas who were not officially deported or banished, but were instead demoted from the rank of pasha to that of bey, and sent to undesirable postings. (Quite often the letter of appointment would declare clearly that this was a punishment). Finally, we should bear in mind that exile was not a sentence meted out to any pasha. It mainly concerned those who played the ‘great game’, that is, those who sought to amass great property and power; those who went, in other words, for what was essentially up for grabs.

Three aspects of the process of banishment are striking. The first is the range of deportation options open to those who gave the order; the second, the complex bureaucracy involved; and the third is the remarkable ability of many banished pashas to resume their climb up the ladder once they were forgiven and allowed to return from their place of exile.

When a pasha was to be banished, the sultan could choose among the following possibilities:

- Posting to a remote province or district without dismissal or demotion. This was usually done tacitly and unofficially, as if it were just another appointment, but all those involved knew it was intended as a punishment, or in order to distance the pasha from his network and sources of power.
- Posting to a remote district with rebuke. This is usually referred to in the sources as *bi-tarik-i nefy/bi- suret-i nefy* or *bi-tarik-i ib'ad* (literally “by way of” banishment/sending away). In most cases this also meant a scaling down of income.¹³
- Banishment with a modest allowance and a group of retainers (which usually involved some demotion in rank). The allowance seems to have been designed

¹² During the *Tanzimat*, as a result of judicial reforms, decisions on banishment were subjected to court procedure.

¹³ In addition to quite a few archive documents see Şemdanizade, Vol. II, p. 59.

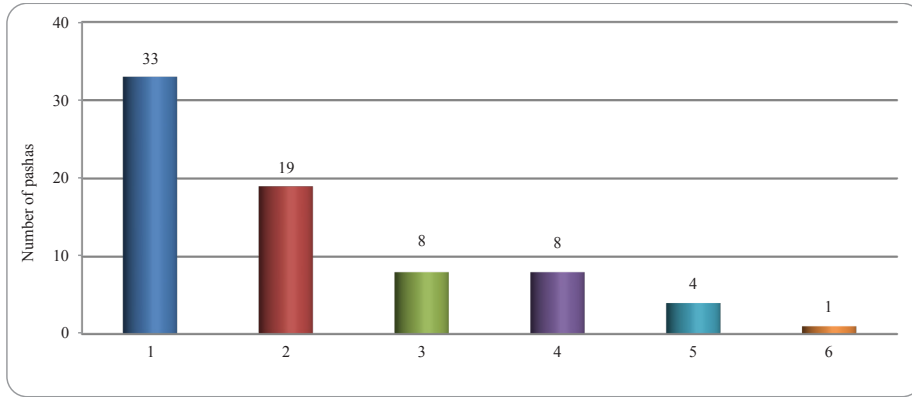


Figure 1.4: Number of dismissals or demotions per pasha

to allow the pasha to live in a style befitting his rank, but obviously without a significant household.

- Banishment with allowance, but accompanied only by the closest family members (usually wife and children).
- Banishment with allowance but no accompanying family members.
- Banishment with dismissal, no allowance, and no accompanying family members, but without confiscation of property.
- Banishment with dismissal, no allowance, partial confiscation, no accompanying family members
- Banishment with dismissal, no allowance, full confiscation, no accompanying family members

In addition there was also the possibility of banishment to a place of exile where the pasha would reside as a prisoner (*kalebent*) in a fortress, far from his usual abode, with restricted rights of movement.¹⁴

Most cases of deportation and banishment recorded in the archives and in chronicles were of the last three or four varieties. One of the records in the *Başbakanlık* Archives is a list from the mid-eighteenth century, compiled by İstanbul harbor's customs officer (*gümrük emini*). It includes the details of people deported via the harbor throughout a period of one month, and their travel expenses for which the customs officer demands to be reimbursed by the authorities. One case mentions ten high-ranking officials being returned from exile along with their accompanying officers; one mentions three people traveling together, and one mentions the pasha and his wife and children. All the other entries mention only one or two persons (presum-

¹⁴ BOA, Cevdet Dahiliye, dosya 315, gömlek 15703.(1769/1182).

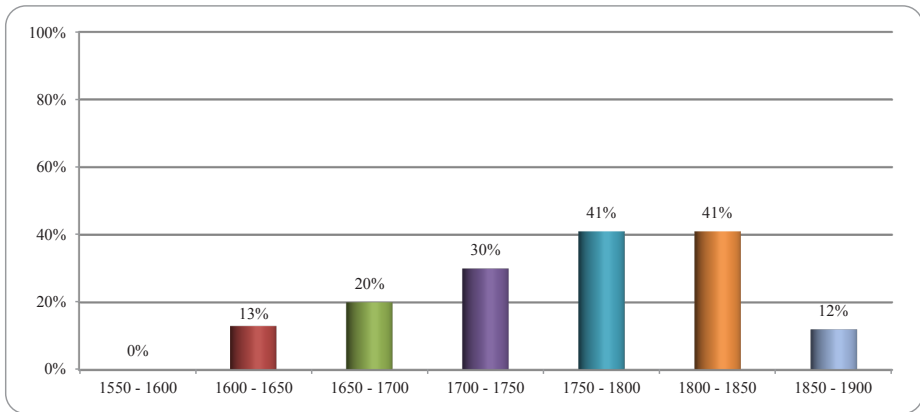


Figure 1.5: Percentages of banished pashas by periods

ably the banished official and a guard) traveling alone.¹⁵ This is corroborated by many other documents in the archive, which only mention one person to be taken to exile and include elaborate discussions of confiscations (more on this later).

In many cases described by famous court chroniclers such as Naima, Subhi, or Şem'dânîzade, the person to be banished was invited to court under some pretext, seized in the palace courtyard or some other isolated location, and immediately taken under guard to a boat that carried him (or, in rare cases, her)¹⁶ directly to the harbor or to the exile destination, with clearly no time to arrange for the accompaniment of a spouse or other retainers. In imperial decrees, the pasha to be banished was usually mentioned by name as a single person, unless otherwise specified.¹⁷ Members of the household could join the culprit at his place of exile later on, but we have seen few documents or chronicles discussing such occurrences.¹⁸ We may conclude that most of those banished were sent away alone and remained in solitude, or were accompanied by a small number of retainers and family members throughout the banishment period. If not immediately dispersed by the authorities, their households remained headless and forlorn, facing an immediate problem of financial liquidity. In most cases, however, this proved to be the least of a household's problems.

As soon as the sultan decided to banish one of his pashas, an entire bureaucratic apparatus kicked in. An order of banishment required a procedure that was often fol-

¹⁵ BOA, Cevdet Dahiliye, 338/16877, (1184/1770).

¹⁶ See, İpşirli, *Naima*, 1137. Münir Aktepe, ed., *Şem'dâni-zâde Fındıklılı Süleyman Efendi târihi Mür'it-tevârih*, vol. 1 (İstanbul, Edebiyat Facültesi Matbaası, 1976), 76, 98, 133, 181

¹⁷ BOA, Cevdet Dahiliye, 152/7574; 153/7623 (here perhaps we can deduce that the wife was sent with the agha); 208/10368; 208/10364; 248/12393 (here a group of kul writes a petition, mentioning their return from exile together with their master); 264/13167; 334/16691; 344/17179

¹⁸ İpşirli, *Naima*, e.g. 88–90, 257, 760, 781–2, 996, 1137, 1216. Vak'anüvis Subhî Mehmed Efendi, *Subhî Tarihi*, (Cev: Mesut Aydınar, İstanbul, Kitabevi, 2007), e.g. 40, 84, 94–5, and quite a few others.

lowed to the letter. Since the *kul*, the sultan's slaves, were an *ordre hors jus*, there was no binding legal procedure in the sharia court for their banishment. Instead, a royal decree (*ferman*) was often written even before the culprit pasha was detained, and kept in secret. It detailed the charges, the decision of the sultan, the place and type of banishment (with or without rank, allowance, etc.), and other relevant facts. As soon as the pasha in question was summoned to the palace, copies of this decree were usually sent to the senior officials in charge of carrying out the sentence, most often the *silahdar* (sword-bearer) or the *çavuşbaşı* (commander of the royal messengers), who, ironically, must have known that they were liable to find themselves in a similar situation somewhere down the road. When banished, the pasha was always accompanied by an officer of the court, generally referred to as *mübâşır* (bailiff). In many cases this was a message-bearer *çavuş* of the royal messenger corps. Sometimes, depending on the rank of the pasha and the gravity of the charges, two or more guards were sent to accompany him. At the same time, when a boat was to be used to convey the culprit to his place of exile, a short note was prepared and dispatched to the harbor-master, letting him know that a prisoner was on the way and asking him to provide the appropriate transportation and provisions. In some of the folders found in the archives another decree was added, sent to officials at the exile destination, usually to the local governor, to the *kadi*, and sometimes to the *dizdar*, the officer in charge of the local fortress, to let them know of the imminent arrival of the deportee. The decree was usually carried in a special pouch by the accompanying *mübaşır* and handed it over to the local governor upon arrival at the destination.

1.4 Confiscation Policy

While all this was going on in one section of government to prepare for the pasha's banishment before he or his friends could find out and obstruct it, another department—the treasury—was busy scrutinizing the deportee's finances and property and drawing up orders regarding its confiscation. As mentioned, this was not done in all cases, and not always in the same style, but when it was, care was taken to enforce the confiscation, which sometimes required complex information gathering, prolonged tracking and constant follow-ups.

In his discussion of households in the late seventeenth century, Abou-El-Haj claims that during this period “the law of confiscation was not abandoned although in a large number of cases only its letter was followed,” and that in most cases the court did not pursue this policy efficiently.¹⁹ This contention refers mainly to the confiscation of property after death, which shall not be dealt with in this paper, but

¹⁹ Abou-El-Haj, *The 1703 Rebellion*, 12–13.

from the documents related to deportation the impression is that the imperial scribal service took great pains to work out the most minute details of confiscation. Sometimes it seems that banishment was only a pretext for confiscation, or, perhaps, from the court's perspective, an attempt to redress a perceived economic imbalance and thus take back some of the riches that the pasha had amassed illegally.

Once in a while grandees were indeed banished without confiscation of property. In such cases close family members and major-domos (*kethüdas*) continued to manage the estate until the pasha returned. Yet the majority of banishment cases found in chronicles and archives involved at least partial, and more often full, confiscation. Here too one discovers many varieties. In some cases a full inventory was requested and detailed instructions were given to sell the property, collect owed debts, and bring the proceeds to the treasury.²⁰ In others the confiscated property was transferred *en bloc* to another pasha, or divided among several other officials. And in still others the estate was given in trusteeship (*emanet*) to a local agent (*mütesellim*) who was charged with conducting its affairs for a set period of time, presumably until the sultan has decided what to do with the exiled pasha. If the court and local community were satisfied with the agent's management, this period would be extended.²¹

In one case the archives have preserved a prolonged correspondence concerning three campaign tents that were part of an exiled pasha's estate and were given by him as collateral for some debt in the past. Since this was the only part of the deportee's estate that the treasury failed to recover, a *mübaşır* was sent to the location and instructed to pay the debt and bring the tents back to Istanbul so that the clerks will be able to close the file on the process of confiscation. Another set of palace communiqués examines the details of harvesting wheat and barley in a banished pasha's estate, and includes instructions for storing it, selling it, collecting the proceeds and sending them back to Istanbul. In a few cases the palace sends orders to return the property to the reinstated pasha who has been brought back from exile. It should be noted however, as several archival documents point out, that in such cases a palace decree was not always enough, and even when the estate was held temporarily by an overseer who was then ordered to return it to the previous pasha it was not easy to get everything back. In many cases the returning pasha had to resort to legal means and even to fight in court to get back part of his property. The court and the administration had to deal with a number of cases in which the estate or part of it was taken over by someone who refused to hand it back.²²

²⁰ See, for instance, BOA, MM, defter 21246, no. 11155, Müsadere Defteri; defter 9739, no. 12194, Ahkam-ı muhalefat defteri; defter 9740, no. 12281, Muhalefata dair ahkam defteri

²¹ For partial transfer of property from confiscation to others see BOA, MM, vol. 7, defter 20190, no. 8191, "kiymetli eşya defteri".

²² BOA, Cevdet As. 1152/51242 (1789/1204); MAD. d. 95 (1665/1076); C. DH. 6/251 (1790/1205); 6/269 (1796/1211); 21/1031 (1781/1195); 65/3211 (1787/1202); 153/7623 (1790/1205); 334/17172 (1787/1202); 344/17179 (1787/1202); C. TZ.6/293 (1205).

Such confiscations are also discussed at length in the chronicles of the seventeenth and eighteenth centuries. In many cases members of the deported notable's dispersed entourage, most notably the *kethüda* in charge of the household, were tortured in order to find the whereabouts of money or other property that the culprit may have hidden from the authorities.²³

1.5 Implications for the Ottoman Household

Our sources demonstrate clearly that dismissals, banishments and confiscations were pervasive and that almost no 'high-flying' household in the imperial center was spared at least some of these measures designed to curtail the power of the governing elite. Bearing in mind also that an even more thorough confiscation of property was carried out after death in most cases, it would appear that households were relatively weak and unstable structures, dependent on the good will and generosity of the sultan and his entourage. Taking into account the fact that there were no legal mechanisms for appeal, that the *kul* class grew at a fast pace during these centuries, and that pressure for positions constantly mounted as the Empire's borders shrank from the eighteenth century on, it is surprising that many of the exiled or demoted pashas found their way back to the saddle. For most of them exile, confiscation and demotion were just a phase, perhaps a necessary step on the ladder, going to the top.

An enigma therefore surrounds the long-term survival of the Ottoman elite household. How did pashas succeed in maintaining households against these odds, in such a volatile atmosphere? How did their offspring succeed in reintroducing themselves into the system? How did banished officials whose property was confiscated succeed in bouncing back, rebuilding an elite household to replace the one abandoned, disbanded and confiscated? How did they manage to obtain senior positions in the face of such dire competition for resources? How did sons, divested of most of their fathers' property, and stripped of any title or claim to office, succeed in climbing the ladder and joining the ranks of senior pashas?

The answers, we believe, lie in the emergence of overlapping networks. In order to survive the 'snakes and ladders' game, and in order to overcome the setbacks that awaited them at every corner and start anew, the pashas needed to create and maintain a safety net of friends in high places. Only a powerful network of such friends and patrons, establishing intimate bonds of interdependence, biding their time for a more favorable climate but keeping an eye out for their banished comrades, would be able

²³ Naima, *Annals of the Turkish Empire from 1591 to 1659 of the Christian Era*, Trans. Charles Fraser (London: Ayer Co Pub, 1932), 234–8. Naima, *Tarih-i Naima* (İpsirli), 760, 976–8, 1137, 1177, 1216. Robert Dankoff, *The Intimate Life of an Ottoman Statesman, Melek Ahmed Pasha (1588–1662)*, (Albany, State University of New York Press, 1991), p. 186. Vak'anüvis Subhî Mehmed Efendi, *Subhi Tarihi*, 94–5

to salvage some of the pasha's status and property. Networks outside the household—those of the pasha's friends in government, former masters and employers, former and present *kul*, protégés among *reaya* leaders, the wife's connections in the imperial harem, and perhaps also people of the same ethnic background—went into action to help their destitute friend. These networks had to be more important than the households which, after all, could be scattered and emptied at the sultan's whim. In the seventeenth and eighteenth centuries the ground was therefore laid for a transformation of the *kul* into a group that stands apart from the sultan, pursues its own interests and seeks to transform itself from an *ordre hors jus* to an *ordre juridique*.

Michael Nizri

2 The Religious Endowments of *Şeyhülislam* Feyzullah Efendi: The *Waqf* Institution and the Survival of Ottoman Elite Households

2.1 Introduction

The *waqf* was one of the most important institutions in Muslim society in general and Ottoman society in particular.¹ It was based first and foremost on the principle of separation between the ownership of a certain asset and the right to enjoy its fruits. Literally, the word “*waqf*” means “stopping”. It has come to refer to the institution of religious endowment, namely the permanent exclusion of endowed properties from transactions. The founder sets aside part of his or her private revenue-bearing property to be inalienable in perpetuity and designates the revenues to support a specific beneficiary. The beneficiaries can be either persons or public utilities, such as family members, poor people, travelers, mosques, *medreses*, or bridges. While the beneficiaries hold a right to revenues of the asset, which may be a building, a large field, an orchard, a bathhouse, a bakery, and so on, they are denied ownership rights (the property is said to belong to God). Theoretically, the state cannot alienate the revenues or assets of a pious endowment.

The *waqf* is established when a declaration by the founder is recorded in a document (*waqfiyya*, endowment deed) and signed by a *kadi* and witnesses. The endowment deed includes all the relevant stipulations: the purpose of founding, the alienated revenue-bearing property (ies), the beneficiary (ies), the proper distribution of the annual income, and the trustee responsible for the management of the *waqf*. The founder also defines how the revenues should be devolved if the beneficiary (ies) has/have expired.

As mentioned, the founder nominated a manager (*mütevelli*) and also specified how this position should be manned in successive generations in accordance with the conditions of the appointment. The manager’s main duties were to uphold of the rules laid down by the founder, maintenance, the effective exploitation of the *waqf*

1 On the *Waqf* institution see for example, John R. Barnes, *An Introduction to Religious Foundations in the Ottoman Empire* (Brill Archive, 1986); Murat Çizakça, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present* (Boğaziçi University Press, 2000); Amy Singer, *Constructing Ottoman Beneficence: An Imperial Soup Kitchen in Jerusalem* (SUNY Press, 2002); R. Peters et al., “*Waqf*”, *EP* XI (2000): 59–99; Hamilton Gibb and Harold Bowen, *Islamic Society and the West* (London: Oxford University Press, 1957), part two, 165–78; Bahaeddin Yediyıldız, “*Vakıf Müessesinin XVIII. Asırda Toplumunda Rolü*,” *Vakıflar Dergisi XIV* (1982): 1–27.

property, and the distribution of revenues among the beneficiaries. Moreover, apparently any transactions relating to the property transferred into the endowment, such as sale, legacy, mortgage, or exchange, were suspended. Yet, as will be discussed, the manager could change the components and conditions of the pious endowment in the event that circumstances changed in order to guarantee that the *waqf* endured.

Three variants of *waqf* were permitted by the Hanafi School, the dominant school in the Ottoman Empire, namely the family *waqf*, the semi-family *waqf*, and the public *waqf*. In the first, the founder stipulated that he would be the beneficiary of the revenues and designated any heirs he had chosen as beneficiaries until the extinction of his line. Additionally, in most cases, he named himself as *mütevelli* and defined how his progeny would succeed to the trusteeship. The semi-family *waqf* excluded the founder and his descendants as beneficiaries, but left the post of *mütevelli* at their disposal until the end of the line, so that they could control some of the revenues and the nominations. Usually, the manager held a right to surplus revenue in addition to his salary. In the public trust, the founder and his offspring were neither beneficiaries nor managers. The trust supported public utilities or unrelated people and the managers did not belong to the family of the founder.²

Whatever the case, *waqf*-making had become the main instrument of philanthropy, practiced by different segments of society throughout the Muslim world.³ The popularity of the *waqf* derived from the fact that it had the ability to fulfill individual, group and state needs. That is to say, the purpose of founding a pious endowment was supposedly religious, ostensibly reflecting the founder's aspiration to please God by giving charity as well as a way to attain Paradise. Still, the *waqf* has always been a useful tool for patronage, the advancement of education and scholarship, the attainment of legitimacy and status, the protection of personal wealth, the development of cities and villages, and the ensuring of a perpetual source of revenue for the family and offspring of the founder, among other objectives.⁴

² Peters, *Waqf*, 61; Yediyıldız, *Vakıf*, 1–10; Idem, “Müesseseler–Toplum Münasebetleri Çerçevesinde XVIII. Asır Türk Toplumuna ve Vakıf Müessesesi,” (1982): 26, 28–30; Robert D. McChesney, *Charity and Philanthropy in Islam: Institutionalizing the Call to God*, (Indianapolis: Indiana University Center on Philanthropy, 1995), 13.

³ McChesney, *Charity*, 8; Singer, *Ottoman Beneficence*, 16–7; Said Amir Arjomand, “Philanthropy, the Law, and Public Policy in the Islamic World Before the Modern Era,” in *Philanthropy in the World's Traditions*, eds. Warren F. Ilchman, Stanley N. Katz, and Edward L. Queen II (Bloomington, IN: Indiana University Press, 1998): 109–112, 117–118; Haim Gerber, “The *Waqf* Institution in Early Ottoman Edirne,” *Studies in Islamic Society* (Haifa: Haifa University Press, 1984): 31–7.

⁴ Yediyıldız, *Müesseseler–Toplum*, 36, 47–53; Gibb and Bowen, *Islamic Society*, 167; Arjomand, *Philanthropy*, 113–25; McChesney, *Charity*, 15–6; Barnes, *Religious Foundations*, 12; Singer, *Ottoman Beneficence*, 21, 24–8, 30, 61–5, 68–70, 112–5; Idem, “Charity's Legacies: A Reconsideration of Ottoman Imperial Endowment-Making,” *Poverty and Charity in Middle Eastern Contexts*, eds. M. Bonner, M. Ener, and A. Singer (Albany, NY: State University of New York Press, 2003), 297–8, 305–8; Halil İnalcık, *The Ottoman Empire: The Classical Age*, Trans. Norman Itzkowitz, Colin Imber, (London: Weidenfeld and

In this chapter, I shall show that the establishment of religious endowments was one of the most important, if not the most important, means of retaining household wealth or at least part of it, and achieving economic independence, in light of the dangers of confiscation or losing one's status. In addition, I shall point to the dynamism and pragmatism of the *waqf* institution by showing that in the course of time the stipulations recorded on the *waqfiyyas* (endowment deeds) were not observed due to changing circumstances.

To this end, I will focus on the religious endowments of *Şeyhülislam* Feyzullah Efendi. In the pages that follow, I will briefly introduce Feyzullah. I will then discuss recruitment into the Ottoman elite household (*kapı*) and the burden of its upkeep. Finally, I will touch upon the endowments themselves, and their economic contribution to the household pointing to several changes that have been made in the original plan of the *waqf* over the years.

2.2 Feyzullah Efendi

Feyzullah Efendi served as *Şeyhülislam*, a functionary who stood at the head of the *İlmiye* (the academic-judicial-religious establishment), during the entire reign of Sultan Mustafa II (1695–1703). He was granted unprecedented executive power. Not only had Feyzullah achieved an iron grip on the affairs of the *İlmiye*, but he also controlled the political sphere. The *Şeyhülislam* was authorized to intervene in the management of state affairs, so much so that he came to dominate the central administration, too—the power base of the vizier and pasha households, especially the office of grand vezir. Going far beyond his traditional role, the *Şeyhülislam*, directed internal and foreign policy instead of the grand vizier. Moreover, Feyzullah Efendi showed a great talent for the accumulation of wealth and property for himself and the members of his household.⁵

The intimacy between the two and the great influence the *Şeyhülislam* wielded over the Sultan allowed him to exercise authority beyond the accepted norms. Feyzullah Efendi served as tutor (*hoca*) to young Prince Mustafa between the ages of 6

Nicolson, 1973), 140–150; Idem, “Capital Formation in the Ottoman Empire,” *The Journal of Economic History* 29, no. 1 (1969): 132–6; Metin Kunt, “The Waqf as an Instrument of Public Policy: Notes on The Köprülü Family Endowments,” in *Studies in Ottoman History in Honour of Prof. V. L. Menage*, eds. C. Heywood and C. Imber, (Istanbul, The Isis Press, 1994): 189–98.

⁵ On Feyzullah Efendi and his special status within the Ottoman government see for example, Rifaat Ali Abou-El-Haj, *The 1703 Rebellion and the Structure of Ottoman Politics* (Istanbul: Netherlands historisch-archaeologisch instituut te Istanbul, 1984); Defterdar Sarı Mehmed Paşa, *Zübde-i vekayiat*, (Ankara: Türk Tarih Kurumu Basımevi, 1995), especially 784–6; Michael Nizri, *Ottoman High Politics and the Ulema Household* (Palgrave Macmillan, 2014).

and 23, and he therefore played a dominant role in the training and shaping of the future sultan. The fact that he kept his position as mentor to Mustafa II when the latter became sultan indicates that he was held in high esteem. Throughout Ottoman history only two other *ulema* served as both *Şeyhülislam* and mentor.⁶ In fact, Feyzullah's tenure as *Şeyhülislam* is apparently to be the period in which the relationship between the sultan and this functionary was the closest.⁷ In addition, it was primarily through Feyzullah Efendi that the sultan tried to curb the growing power of the vizier and pasha households. As we shall see, the *Şeyhülislam* took advantage of Mustafa II's affection and appreciation at the time of the establishment of his religious endowments.

2.3 The Ottoman Elite Household: Recruitment and Upkeep

As Ehud Toledano points out, the *kapı* was built upon the dyadic relationships created between the head of the household, namely the patron, and his client.⁸ The head of the household/patron had an interest in recruiting many protégés into the *kapı* in accordance with economic resources in order to strengthen his position within the Ottoman elite both politically and economically. The placement of protégés in strategic positions helped the patron considerably in promoting his political interests and protecting himself from the intrigue of rivals or the anger of the Sultan. Similarly, high-ranking officials who maintained large households gained priority regarding appointments, promotions, and the allocation of valuable sources of income.⁹

As a matter of course, the patron sponsored, first and foremost, members of his nuclear and extended family. Heads of households worked intensively to pass on their status and privileges to their descendants in order to assure the future of the family as a whole. In parallel, they also acted to help their blood relatives integrate into the Ottoman elite. The head of the household was surrounded by his wives, concubines, and children. Next came his brothers, nephews, cousins, and other relatives. Generally, the family member who had achieved the highest position stood at the head of an extended family. Blood ties apparently played a central role among the *ulema*, who

6 Murat Akgündüz, *XIX. Asır Başlarına Kadar Osmanlı Devletinde Şeyhülislamlık*, Vol. 346 (İstanbul: Beyan, 2002), 92; İsmail H. Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı*, Ankara: Türk Tarih Kurumu Basımevi (1988): 148; Orhan F. Köprülü, "Feyzullah Efendi," *İslam Ansiklopedisi* IV (1948): 599.
7 Akgündüz, *Şeyhülislamlık*, 136–7.

8 Ehud R. Toledano, "Review Article: Jane Hathaway, *The Politics of Households in Ottoman Egypt: The Rise of Qazdağlıs*," *Journal of the American Oriental Society* 120, no. 3 (2000): 451.

9 Metin Kunt, *The Sultan's Servants: The Transformation of Ottoman Provincial Government, 1550–1650* (New York: Columbia University Press, 1983), 77, 88–9; Fatma M. Göçek, *Rise of Bourgeoisie, Demise of Empire: Ottoman Westernization and Social Change* (New York: Oxford University Press, 1996), 59.

succeeded more than any other group in the Ottoman elite to institutionalize patronage and make it official.¹⁰

Apart from blood ties, the patron could utilize other accepted routes, such as marriage ties, employment (servants as well as officials), personal appeals from people wishing to attach themselves to his household, suckling relations, and slavery, to establish patronage relationships (*intisap*).¹¹ It can be said that the Ottoman grandee household embodied both virtual and actual patronage relationships. On the one hand, the formation of a household was demonstrated by the existence of a central residence in which a “critical mass” existed around the head of the household (family members, slaves, servants, retainers, guards, scribes, and others). On the other hand, the Ottoman household was not a well-defined, finite entity. Dror Ze’evi rightly remarks that the definition of a household must include the virtual space, where the head of the *kapı* controlled his men, slaves and clients. He adds that it should also include the patron’s mastery over income-producing sites in the city and the village, and that the household stood in the center of a vast political network.¹²

Usually, the households of highly placed military and administrative officials included hundreds and in some cases even thousands of people, depending on the rank and wealth of the head of the household. My study reveals that the *kapı* of high-level *ulema*, such as Feyzullah Efendi, also numbered hundreds of people.¹³ According to the chronicler Defterdar Sarı Mehmed Paşa, Feyzullah’s contemporary, the estimated number is 300.¹⁴ Naturally, the larger the household, the heavier the economic burden.

Thus, the *kapı* could not survive or hold on to political power without guaranteeing stable sources of revenue. The upkeep of a large household entailed an exorbitant financial burden owing to the increasing expenses connected with, among other things, gift-giving, members’ maintenance, appointments, support for a retinue during military campaigns, and contributing to public welfare.

In most cases, the revenues allocated by the sultan in the form of fiefs, salaries, special stipends, and so on were insufficient. Sometimes, it was the sultan’s deliberate policy designed to curb the challenge of the households and increase his officials’

¹⁰ Uzunçarşılı, *İlmiye*, 67–74; Madeline C. Zilfi, *The Politics of Piety: The Ottoman Ulema in the Post-classical Age, 1600–1800*, No. 8 (Minneapolis, MN: Bibliotheca Islamica, 1988), 43–80.

¹¹ Toledano, *Review*, 451; Göçek, *Demise*, 32, 55; Carter V. Findley, *Bureaucratic Reform in the Ottoman Empire: The Sublime Porte, 1789–1922* (Princeton, New Jersey: Princeton University Press, 1980), 30–40.

¹² Dror Ze’evi, “Chaotic Empire: The Ottoman Household as a Dynamic Attractor”, in *Turkey: The Ottoman Past and the Republican Present, Studies in Memory of Aryeh Shmuelevitz*, eds. Michael Winter and Miri Shefer, (Tel-Aviv: The Moshe Dayan Center for Middle Eastern and African Studies 2007), 16 [Hebrew].

¹³ Nizri, *Ottoman High Politics*, 54–86.

¹⁴ Defterdar, *Zübde*, 795–6.

dependence upon him.¹⁵ Therefore, high-ranking officials, including *ulema*, used various measures to generate additional income, such as tax farming, investments in real estate and trade, the establishment of religious endowments, and money lending.¹⁶ As a result, the households controlled a variety of sources of income, and allocated economic surplus through religious endowments for the benefit of the public.

Nevertheless, Ottoman officials were considered the sultan's servants/slaves. Hence, they could be subjected to two sanctions: execution and/or confiscation of property. According to custom, *ulema* enjoyed immunity from both sanctions since they belonged to the religious institution.¹⁷ This immunity enabled them to accumulate wealth and power far longer than their peers in other elite groups. As Madeline C. Zilfi puts it, "*Ulema* families, more than any others, enjoyed legal and consistent access to estate preservation."¹⁸ Consequently, powerful and multi-generational *ulema* dynasties were established in the center and in the periphery as well. Nevertheless, there were cases, especially in the seventeenth century, in which the immunities of the *ulema* were not honored.¹⁹ No wonder, then, that officials from all branches of Ottoman administration had long used the pious endowment as a means of accumulating, maintaining and bequeathing property, as endowments were irrevocable (in most cases).

2.4 The Religious Endowments of Feyzullah Efendi

The *waqfiyya* of Feyzullah Efendi can be found in the Archive of the Pious Foundations in Ankara (Vakıflar Genel Müdürlüğü Arşivi).²⁰ Another important source on Feyzullah's endowments is the article by Serhan Mehmed Tayşi who served as manager

15 Göçek, *Rise of Bourgeoisie*, 56–7; Jane Hathaway, *The Politics of Households in Ottoman Egypt: The Rise of the Qazdağlıs* (Cambridge University Press, 1997), 166.

16 Göçek, *Rise of Bourgeoisie*, 53–4, 56, 61; İnalçık, *Capital Formation*, 129–30, 132–6; Madeline Zilfi, "Elite Circulation in the Ottoman Empire: Great Mollas of the Eighteenth Century", *Journal of the Economic and Social History of the Orient* 26 (1983): 350–1; Rifaat Ali Abou El-Haj, *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries* (Syracuse University Press, 1991), 46, 57–8; Suraiya Faroqhi, "Crisis and Change, 1590–1699", in *An Economic and Social History of the Ottoman Empire, 1300–1914*, eds. Halil İnalçık and Donald Quataert (Cambridge University Press, 1994): 547–52.

17 Zilfi, *Ulema*, 70–1; Faroqhi, *Crisis and Change*, 557–8; Abou El-Haj, *Formation*, 46–7; Ahmet Mumcu, *Osmanlı Devletinde Siyaseten Katl*, no. 180 (Ankara: Ajans-Türk Matbaası, 1963), 125–31.

18 Zilfi, *Ulema*, 71.

19 Ibid, 70.

20 *Başbakanlık Vakıflar Genel Müdürlüğü* (Prime Ministry Directorate General of Foundations), Ankara, Register no. 571, 104–34 (hereafter BVGM).

of the library that was established in Istanbul by Feyzullah Efendi.²¹ Biographical dictionaries, chronicles and local history books also shed light on the philanthropic activities of the latter. The above sources show that seven cities across the Ottoman Empire benefitted from Feyzullah's endowments (see Table 2.1).

Table 2.1: Religious endowments founded by Feyzullah

City	Public Utilities
Istanbul	<i>Medrese</i> including a library, school (<i>mekteb</i>), school for Quran teaching (<i>darülkur'an</i>), mosque and a classroom (<i>dershane-mescid</i>), fountain (<i>çeşme</i>), a fountain for ablution (<i>şadırvan</i>)
Erzurum	<i>Medrese</i> , mosque and <i>darülkur'an</i>
Damascus	College teaching traditions of Islam (<i>darülhadis</i>)
Edirne	Fountain ²²
Mecca	<i>Medrese</i>
Medina	<i>Medrese</i> ²³
Jerusalem	<i>Medrese</i>

As shown in Table 2.1, Feyzullah established religious endowments in Istanbul, Edirne, Erzurum, Damascus, Mecca, Medina, and Jerusalem for the maintenance of institutions such as mosques, *medreses*, and schools as well as for fountains. In all cases, private property granted by the sultan earlier by means of *temliks*, which included villages and salt-works, was converted by Feyzullah into endowments.

Normally, high dignitaries applied for a land grant through a *temlik* (a sultan's grant of private ownership of public assets). Usually, the applicant (vezir, princess, *Şeyhülislam*, etc.) declared that the revenue of public land (mainly a village or villages) was needed to establish a major pious endowment. Recognizing that the applicant deserved a reward for his good services and loyalty, the sultan would issue a title deed in which he granted ownership of the land. By so doing, the public land was converted into inheritable registered private property. The title deed also included a special document that specifically defined the boundaries of the property belonging to the *waqf*. Everything within these boundaries, along with the land (rivers, forests,

²¹ Serhan Mehmed Tayşi, "Şeyhül-islam Seyyid Feyzullah Efendi ve Feyziyye Medresesi," *Türk Dünyası Araştırmaları* 23 (1983): 9–100.

²² Yılmaz Öztuna, *Devletler ve Hanedanlar. "Türkiye (1074–1990)." Ankara, TC Kültür Bakanlığı 1996 (1990): 652.*

²³ According to Süreyya, Feyzullah also founded a school for teachers (*muallimhane*) and a library there. See Mehmed Süreyya, *Sicil-i Osmânî-Osmanlı Ünlüleri*, Yayına Hazırlayan Nuri Akbayır (Ankara: Tarih Waqfı Yurt Yayınları), C 2 (1996): 533.

hills, etc.), was included in the private ownership. Moreover, the state renounced all rights to the land, such as collecting taxes or enforcing the law.²⁴ The villages and salt-works, that had been previously categorized as state *mukataas* (sections of state revenues distributed by tax farming), granted by Mustafa II to Feyzullah by means of *temliks* in order to enable him to establish pious endowments, are detailed in Table 2.2.

Table 2.2: Public property transferred to Feyzullah Efendi's private ownership on behalf of the sultan

Province	The <i>mukataa</i>	Current annual amount of the <i>iltizam</i> (tax farm contract)	The beneficiaries and their location
Damascus	Muazzamiyye village	24,000 akçe	<i>darülhadis</i> —Damascus <i>medreses</i> in Istanbul, Mecca, Medina and Jerusalem
	Baalbek village	7,220 kuruş (over one million akçe)	
Erzurum	Gönelü salt works	27,016 akçe	<i>Medrese</i> , mosque and <i>darülkur'an</i> — Erzurum (city)
	Kömör salt works	65,000 akçe	
	Kömör village	40,000 akçe	
	Timusi salt works	10,000 akçe	
	Sim village	37,000 akçe	

The *temlik* concerning the village of Baalbek and its surroundings is worth noting. This village, located in the province of Şam (Damascus), yielded an annual income of over one million *akçe*. Generally, the sultan was reluctant to give away prosperous villages. Hence, the willingness of Mustafa II to cede such a profitable tax farm is indicative of the special status of the *Şeyhülislam* at court.

The religious endowments founded by Feyzullah Efendi correlate to the model of a semi-family *waqf*. Though the beneficiaries were religious and educational institutions, the founder's descendants were assured of perpetual support by a stipulation that the surplus revenues would be divided among them, and by establishing family members in paying positions such as that of administrator (*mütevelli*). Feyzullah had stipulated that the pay of the manager would be 40 *akçe* a day, and designated himself as the first holder of this position. Also, in the event the extinction of his line, it was stipulated that the poor of Mecca and Medina would be named as the new beneficiaries in order to preserve the principle of perpetuity. After all, it was believed that the existence of the poor is perpetual as long as human beings exist.²⁵

²⁴ Halil İnalcık, "The Ottoman State: Economy and Society, 1300–1600," in *An Economic and Social History of the Ottoman Empire 1* (Cambridge: Cambridge University Press, 1994): 120–6.

²⁵ BVGM/571: 107, 119–20.

2.5 The Contribution of the *Waqf* to the Survival of the Household

The 1703 rebellion put an end to the preeminence of Feyzullah Efendi's household. The rebels dethroned Sultan Mustafa II and executed the *Şeyhülislam* and his eldest son. Feyzullah Efendi had become a much hated figure among the ruling elite, including his own peers, and the rank and file, owing to the strategies he employed to establish his household in the imperial center.²⁶ In fact, the *Şeyhülislam*'s behavior paralleled that of the ambitious *vezir* or *paşa* of his time, in spite of his being a member of the *ulema*. As a result, he was blamed by contemporaries for transgressing the elite code. This was the main reason for his downfall.

Following Feyzullah Efendi's execution, most of his household's wealth was confiscated by the new sultan, Ahmed III (1703–1730), and its affiliates were banished to diverse places such as Bursa or Cyprus.²⁷ The cash and real estate that had been confiscated by the state in Istanbul and Edirne alone, yielded the treasury the tremendous sum of nearly 50 million *akçe*.²⁸ Moreover, that *ulema* members of the *kapı*, including relatives, were denied posts within the *ulema* hierarchy or were demoted in rank and pay. Thus, in contrast to the accepted norm, Feyzullah Efendi's immunity from confiscation of property was not honored.

Furthermore, immediately after Sultan Ahmed III ascended the throne, he decided that the villages of Baalbek and Muazzamiyye (Damascus province) granted by his predecessor to Feyzullah through *temliks* would revert to state control as part of the sanctions against the *Şeyhülislam* and his followers.²⁹ Apparently, according to the rules of the *waqf*, the state could not reclaim property granted for the establishment of pious endowments. As noted, the state had officially conceded all rights in favor of the grantee. Nevertheless, İnalcık mentions that in fact the state always retained ultimate ownership of the land and could abrogate land titles for various reasons, such as neglect of the land.³⁰

Apart from the villages of Baalbek and Muazzamiyye, which reverted to the state, Sultan Ahmed III did not touch the other villages and salt-works that Sultan Mustafa II had granted to Feyzullah in order to establish the religious endowments. Interestingly, it appears that at some point, the family of Feyzullah again obtained the right

²⁶ On the Rebellion see, Abou-El-Haj, *The 1703 Rebellion*.

²⁷ See, for example, Defterdar, *Zübde*, 833; Başbakanlık Osmanlı Arşivi (Istanbul), Mühimme Defterleri, 114/1:55.

²⁸ Başbakanlık Osmanlı Arşivi (Istanbul): Kamil Kepeci Tasnifi, No. 2322, 85.

²⁹ Başbakanlık Osmanlı Arşivi (Istanbul), Cevdet/Saray: 1223.

³⁰ İnalcık, *Economy and Society*, 124–6. See also Barnes, *Religious Foundations*, 41–2 and Michael Nizri, "Defining Village Boundaries at the Time of the Introduction of the *Malikane* System: The Struggle of the Ottoman State for Reaffirming Ownership of the Land," *Journal of the Ottoman and Turkish Studies Association* (forthcoming, 2015).

of proprietorship over Baalbek and Muazzamiyye, probably between 1730 and 1743.³¹ More important, as will be shown, by 1743 new village lands in the province of Damascus had been endowed. Presumably, they were given as compensation in lieu of the prosperous village of *Baalbek* that had been confiscated earlier.

Additionally, the terms of the *waqf* deeds promised the family control of appointments as well as part of the income. The office of administrator of the religious endowments, which was safeguarded for Feyzullah's family, ensured a daily income of 40 *akçe*. Feyzullah even stipulated in one of the endowment deeds that all his children, and indeed there were many (at least 17), would receive a daily allowance of 20 *akçe* each until marriage.³² Moreover, apparently, throughout the family's exile and even afterwards there was excess income to be divided between the administrator and the rest of the family. It turns out, for example, that in 1743, when Feyzullah's son served as manager, the surplus of revenues to be divided among descendants was approximately 67,000 *akçe*.³³

The aim of the severe sanctions mentioned above was to weaken the political and economic power of the household established by Feyzullah Efendi, and cause it to fade from the political scene. At that time of crisis, one would expect the *kapı* to have disappeared from the center of Ottoman power. Instead, two of Feyzullah's sons were appointed to the role of *Şeyhülislam* during the reign of Mahmud I (1730–1754).³⁴ By the beginning of the nineteenth century, the family had established itself as one of the three principle *ulema* families. Needless to say, the vehicle through which the household managed to survive, preserve part of its wealth and continue to provide family members with sources of income, was the pious endowments established by Feyzullah Efendi.

2.6 The Dynamism and Pragmatism of the *Waqf*

One question that arises is whether the stipulations set by Feyzullah in the endowment deeds were upheld in letter and in spirit. In this regard, Singer notes that there is a tendency to see any deviation from the original plan of the endowment, such as the exchange of property or the changing of components/conditions, as an indication of the flawed nature of the *waqf* and of corrupt managers. However, she claims that her research on the Jerusalem *waqf* of Hurrem Sultan, the wife of Sultan Süleyman "the Magnificent," reveals that the original plan of a *waqf* was more of a general outline

³¹ Başbakanlık Osmanlı Arşivi (Istanbul), Nezaret Öncesi Evkaf Defterleri, No. 4339, 1.

³² BVGM /571: 119.

³³ Nezaret Öncesi Evkaf Defterleri, No. 4339, 4.

³⁴ Süreyya, *Sicill*, IV: 1154; Öztuna, *Hanedanlar*, 653; Abdülkadir Altunsu, *Osmanlı Şeyhülislamı* (Ankara: Ayyıldız Matbaası, 1972), 135.

because the *waqf* was in fact mutable. This is because its managers were obliged by practical considerations and immediate daily needs to reshape it in order to adhere as closely as possible to the general purpose of the *waqf*.³⁵

Similarly, Miriam Hoexter, who studied the religious endowments established in favor of the cities of Mecca and Medina in Ottoman Algiers, concludes that the managerial policy was characterized by a constant dialogue between the letter of the *waqf* law and socio-economic requirements.³⁶ It is worth noting that unlike many other studies on the *waqf*, Hoexter's study follows the management of the foundations for a long period, from the last decades of the seventeenth century until the French occupation of the town in 1830. Equally important, her study is not based only on endowment deeds, but also uses other documents which deal with the functioning of the pious endowments.

Likewise, by following the managerial policy of Feyzullah's endowments throughout a period of approximately 70 years, I will show that it was pragmatic, realistic, and flexible. To this end, I will utilize archival documents dealing with pious endowments of Feyzullah Efendi over the years, and especially an account register from 1743 that describes the revenues and expenses of the endowments.

The salaries that were fixed by Feyzullah for different functionaries and beneficiaries at the end of the seventeenth century gradually lost their value in the course of time. Therefore, it was necessary to increase salaries from time to time to accord with the increased cost of living. The aforementioned report of 1743 shows that the salaries of some functionaries had improved over the years. The salary of the tax collector in Erzurum rose from 5 to 10 *akçe* a day, the salary of the *müderri*s in Istanbul rose from 120 to 150 *akçe* a day, the salaries of the librarians in Istanbul rose from 12 to 15 *akçe* a day, the salaries of the mosque sweepers in Erzurum rose from 3 to 8 *akçe* a day, and so on.³⁷ Of more interest is the unusual increase, from 5 to 40 *akçe* a day, in the salary of the scribe responsible for recording the revenues of the endowed properties in Erzurum.³⁸ Probably this drastic change in salary is related to the fact that the scribe was Abdullah Efendi, the grandson of Feyzullah and the son of the current manager. The last case demonstrates how the manager could use his power in order to secure the economic well-being of his descendants.

According to one of the stipulations in the endowment deeds, the adding of positions beyond those approved by the founder was totally forbidden. Still, factors such as expansion or decrease in activity had played an important part in increasing or reducing the number of employees, thus making strict implementation of the stipula-

³⁵ Singer, *Ottoman Beneficence*, 10, 12–3, 43, 161.

³⁶ Miriam Hoexter, *Endowments, Rulers and Community: Waqf al-Haramaynin Ottoman Algiers*, Vol. 6 (Brill, 1998), 141–3.

³⁷ Nezaret Öncesi Evkaf Defterleri, No. 4339, 1–2.

³⁸ Ibid, 2.

tion quite difficult. It transpired that the manpower inventory was not maintained over the years. On the one hand, the number of librarians in Istanbul was reduced from three to two. On the other hand, the number of *imams* in Erzurum was increased from two to three.³⁹

Moreover, it is interesting to learn that Şerife Saliha Hanım, the daughter of the founder, held the position of prayers reciter (*duacı*), which provided her with a daily wage of 60 *akçe*, in the mosque established by Feyzullah in Istanbul, a position that is not mentioned at all in the *waqfiyya*. So we are informed in a petition submitted by Şerife's niece to the Sultan in 1765 in which she requested to fill the vacant post of *duacı* left by her late aunt.⁴⁰ Possibly, adding this new post, not commonly held by women, was meant to provide a stable source of income for female relatives as well.

Also, the economic stability of the *waqf* was constantly threatened by various obstacles such as natural disasters, large or unexpected expenses, decrease in revenues, physical deterioration of assets, etc. Hence, there were legal procedures that enabled selling or replacing transactions regarding *waqf* properties as needed, as long as the manager thought it was in the best interest of the endowment.⁴¹ This shows that the institution of the *waqf* was a living and dynamic endeavor whose running was influenced by the circumstances of the day, and that *waqf* properties were actually considered economic and commercial commodities.

That is why the revenue-yielding properties endowed by Feyzullah had been changed over the years, as can be seen from the account register of 1743. For instance, between 1730 and 1743, three new villages in the province of Damascus—Heşmeş, Gaymi, and Kefersu Siyah—were annexed to the properties of the endowment, together yielding considerable income.⁴² As mentioned, it appears that the reason for adding new revenue-yielding properties was the reversion of some properties to state control.

Another case in point concerns a salt-work in Erzurum province (Kömör) whose revenues supported the mosque and *medrese* founded by Feyzullah in the city of Erzurum, the founder's hometown. Archival documents testify that a gradual process took place between 1708 and 1720 in which the customs of Erzurum replaced the salt-work as the new revenue-bearing source.⁴³ Perhaps fluctuations in the revenues of the salt-works resulted in its exclusion from the list of properties.

In conclusion, the choice by Şeyhülislam Feyzullah Efendi of the semi-family *waqf* model enabled him to maneuver between concern for family needs and concern for society's needs. He founded religious and educational institutions that created hun-

³⁹ Ibid.

⁴⁰ Başbakanlık Osmanlı Arşivi (Istanbul): Cevdet Evkaf/19448.

⁴¹ Singer, *Ottoman Beneficence*, 21–2, 50–3; Hoexter, *Endowments*, 94–137; Peters, *Waqf*, 62, 67.

⁴² Nezaret Öncesi Evkaf Defterleri, No. 4339, 1.

⁴³ Osmanlı Arşivi (Istanbul): İbnülemin Vakıf/4656, 6901; Cevdet Evkaf/15345.

dreds of jobs, arranged financial help for pupils and students, contributed to urban development, and provided the local population with services such as religion, education, and a water supply. At the same time, the religious endowments served to preserve part of the family wealth, secured permanent sources of income for family members, helped to control revenues and nominations, and last but not least played an important role in guaranteeing the survival of the household. Apparently, the managers of the endowments were adjusting to altered circumstances by adopting a cautious and pragmatic attitude. By so doing, they tried to ensure that the purpose of the *wakf* would endure.

Tsameret Levy-Daphny

3 To be a *Voyvoda* in Diyarbakır: Socio-Political Change in an 18th-Century Ottoman Province

Mustafa Ağa, the son of Abdülvehhab Ağa and grandson of Hacı Hüseyin, served as the *voyvoda* of Diyarbakır for several years before he died in the city of Amid (Diyarbakır). This was the most senior position he ever held. On 6 June 1741, probably not long after his death, three women appeared at court to apply to the office of the Diyarbakır registrar (*kassam*) for the registration and devolution of Mustafa Ağa's patrimony. As a result, his considerable property: cash, real estate, belongings and debts, were registered, calculated and evaluated at the sum of 118,969 *kuruş*. From his probate inventories we know the extent of his holdings and his involvement in the commercial life of the city and beyond: he owned five houses, five shops, a dye house, and a bakery, all in the city of Amid, as well as other property beyond the city walls. All of these, including the money, were divided among three legal heirs: his sister Emine Hatun, who received the lion's share of the inheritance, Zeynep Hatun, his mother, and his only wife, Hamide Hatun. The last two had to settle for less than Emine's share.¹ Although this is a puzzling distribution of the patrimony, there are other, still more surprising elements in this story.

It turns out that Mustafa Ağa had the equivalent of 45,253 *esadi kuruş* (Dutch Löwentalers) in cash and personal belongings in the *Bedestan-ı Atık* and invested with his broker (*sarraf*) in Istanbul. This money that was confiscated after his death in 1741,² suggesting that Mustafa Ağa was not merely rich: he was a *kul*, one of Istanbul's—slaves of the Porte, whose possessions were considered part of the sultan's assets, and whose money and material goods were appropriated by the state treasury upon their death.³ This raises the question of why his Diyarbakır goods were not confiscated like those in Istanbul. In part, this chapter will provide an explanation for

1 Diyarbakır Şer'iye Sicilleri, 315: 71–76 (hereafter DŞS)

2 Başbakanlık Arşivi, Bâb-ı Defter-i Baş Muhasebe Muhallfat 12532 (hereafter D.BŞM.MHF 12532); Ariel C. Salzman, *Measures of Empire: Tax Farmers and the Ottoman Ancien Régime, 1695–1807* (Columbia University, 1995), 278.

3 Mehmet Zeki Pakalın, "kapı kulu" in *Osmanlı tarih deyimleri ve terimleri sözlüğü*, (İstanbul: Milli Eğitim Basımevi, 1951), I: 173–5; Metin Kunt, *The sultan's servants: the transformation of Ottoman provincial government 1550–1650* (New York: Columbia University Press, 1983), 6–7, 41–5, 97; Karl K. Barbir, "One Marker of Ottomanism: Confiscation of Ottoman Officials' Estates," in *Identity and Identity Formation in the Ottoman world: A Volume of Essays in Honor of Norman Itzkowitz*, eds. Baki Tezcan and Karl K Barbir (Madison, Wisconsin: Center for Turkish Studies at the University of Wisconsin & The University of Wisconsin Press, 2007), 135–146; Eduard J. Erickson and Mesut Uyar, *A Military History of the Ottomans: From Osman to Atatürk*. (Santa Barbara, California: Greenwood Publishing Group, 2009), 17–20, 28–9, 91–6, 108–110, 120–8.

this discrepancy. But further to that, this incongruity will provide the starting point for some of the interesting insights driven out of the *voyvoda*'s narrative. This essay will discuss three main questions concerning the social arena and its dynamics in the Ottoman provinces. Primarily, what were the roles and the social meaning of the *voyvoda* and the *voyvodalık* in the eighteenth century?

The story of Mustafa Ağa, the *voyvoda* of Diyarbakır reveals much about the practical meaning of being a *voyvoda* and enriches our knowledge on this subject, mainly obtained from the eminent work of Ariel Salzmann. The political and social status of the *voyvoda* vis-à-vis the *vali* is also addressed here. The *voyvoda* was a rising power in the Ottoman administration at that time, hence a potential for struggle between himself and the *vali* was obviously unavoidable. Yet the *voyvoda*'s position enabled him the advantage of a relatively safe mode to increase his fortune and political power, while others were genuinely in danger of losing their career, their property, or even their lives. This could not have happened without the help of mediators in Istanbul—either the *sarraf*, who played a fundamental role once the tax-farm and the life-term tax-farm were introduced, or from other family and household members holding central positions in the Empire. Hence, the second question this chapter wishes to examine is the relations between the center of the empire and the provinces.

Scholars have long rejected the so called disconnection of the provinces from the center of the Empire in the seventeenth and eighteenth centuries, when powerful locals were taking over the administration of the *vilayets*. Ehud Toledano describes this social change as the “Ottomanization-Localization” process: in the seventeenth and eighteenth centuries, Toledano suggests, the *askeri* (the military and bureaucratic elites) established themselves in the provinces, while at the same time notable provincial families became integrated into the urban Ottoman elite. The career of Mustafa Ağa sketches clearly both stages of this process and contributes to our understanding of how precisely this was done. Additionally, the rift in his extended family between Istanbul and Diyarbakır shows the availability of these two options—Ottomanization and localization—while the advantage to families who could function at both levels is lucidly demonstrated.

The nature of the relations among elite members of society is the third matter to be discussed, with specific focus on bonds of patronage. How individuals created and perpetuated interactions of patronage in the daily life is a fascinating question that will help elaborate on the pragmatic nature of these relations. Gifts, loans, and debts were all used to create a feeling of indebtedness, a strong ground for patronage relations. Hence, accordingly in the following paragraphs, the story of Musatafa Ağa, a *voyvoda* from Diyarbakır, will serve as a case study.

3.1 The *Voyvoda* and *Voyvodalık*

The title of *voyvoda* and *voyvodalık* (the office of the *voyvoda*) were used with differing meanings throughout the years of Ottoman rule for various responsibilities and authorities, and differed from one place to another. Etymology derives *voyvoda* from the Slavic root *vojn*, signifying a high-ranking military commander in mediaeval Serbia or governor of a military district on the eve of the Ottoman conquest. In early Ottoman sources, however, the term appears to relate to Christian lords, and during the sixteenth century this title was used variously to designate a sub-commander, civil governors of the Black Sea and Balkan regions, as well as the governor of Athens, as Stathi shows. The title accrued further meanings soon after. *Voyvodas* were agents (sometimes called *naip*) attached to the *timar* and *zeamet* system, in charge of revenues from the imperial and other domains, including *has* fiefs granted to *vezirs*, provincial governors and other dignitaries.⁴

With the expansion of the tax-farm system (*mukataa*) in the seventeenth century, and especially towards the end of the century when the Ottoman administration started leasing tax-farms for life-long tenure (*mâlikâne mukataa*—sometimes even transferred to the descendants), the position of *voyvoda* entailed responsibility for supervising and managing the bulk of these contracts, and was itself a tax-farm contract. At the beginning of the eighteenth century, for example, such a contract for the *voyvodalık* of Diyarbakır was sold for 15,000 *kuruş*. *Voyvodas* accumulated fortunes, and extended their power by getting a share of the profits of the *ilitzâm* or *mâlikâne* contract they were in charge of. Others, we learn, received a salary from the central government. A *voyvoda* could earn 22,500 *kuruş* per year. By selling regional contracts, the state managed to raise money from provincial investors as well as from those in Istanbul, and the revenues were used more and more to finance the expenses of the governors in the provinces.⁵

This is how, during the eighteenth century, the *voyvodalık* of Diyarbakır, like its equivalents, the *muhasıslık* of Aleppo or the *defterdarlık* of Damascus, became responsible for most of the fiscal affairs in the urban administration and absorbed many of its functions, such as taxation of dye works, weighing the wheat, affixing the black tax stamp on clothes, as well as collecting household taxes, extraordinary taxes

4 Mehmet Zeki Pakalın, “*Voyvoda*” in *Osmanlı tarih deyimleri ve terimleri sözlüğü* (Istanbul: Maarif Basımevi, 1954), III: 598; Fili Adanir, “Woywoda,” in *Eİ2* (Leiden: Brill, 2002), XI :215; Maria Pedani, “Sultans and voivodas in the 16th century : gifts and insignia,” *Journal Of International Social Research* 1 (2007): 194–5; Ariel Salzmann, *Tocqueville in the Ottoman Empire: Rival Paths to the Modern State* (Boston: Brill, 2004), 128; Katerina Stathi, “An (in)famous governor: The *voyvoda* of Athens Hadji Ali Haseki” in *RCAC Mini-Symposium: Provincial Officials in the Ottoman Empire during the Mid-18th and 19th centuries: formation, functions, identities* (Istanbul, 2009), 1–10.

5 Ariel C. Salzmann, *Measures of Empire: Tax Farmers and the Ottoman Ancien Régime, 1695–1807*, (PhD Thesis, Columbia University, 1995); Salzmann, *Tocqueville in the Ottoman Empire*, 156.

(*avariz*) and poll taxes (*cizye*), while retaining the former tasks relating to the agrarian economy and its taxes.⁶ Though Evliya Çelebi's *siyahatnamesi* of Diyarbakır from the seventeenth century reports the existence of a *defterdar*, in the following century this office no longer existed. Instead the *voyvoda* achieved extreme importance in the administration of the *vilayet*: Ottoman decrees from the center to Diyarbakır were mainly addressed to the *vali*, the *voyvoda*, and the *kadi*, heads of the highest levels of the bureaucracy of the *vilayet*.⁷ Thus, the *voyvoda* was a kind of broker or mediator between the center and the provinces.

In war-time or during internal conflicts the *voyvoda*'s responsibility was even greater. In 1777 the *voyvoda* of Diyarbakır recruited 2,000 militiamen (*sekban*) to defend the *vilayet* of Musul, a military force similar in size to that recruited by the governor of this province himself.⁸ The *voyvoda* was thus at times second only to the authority of the governor, which was a potential for either collaboration or struggle.⁹ In the late 1800s and at the beginning of the 1900s the *voyvodalık* of Diyarbakır was often granted to local figures, many of them from the prominent *şeyhzade* family of Diyarbakır.¹⁰

Mustafa Ağa, originally from Diyarbakır, was born to a well-established Muslim family. In the eighteenth century, however, this did not contradict his being a *kul*: since the 1600s Muslims were also recruited to the corps; moreover, free-born Muslims could buy pay-certificates (*esāme*) that entitled them to a rank and a place on the rolls of privileged salary receivers. In 1740 this practice was legalized by Sultan Mahmud I.¹¹ How Mustafa Ağa of Diyarbakır won his title is not entirely clear yet we know that it was a direct result of the fact that his father and uncle were genuine *kul* in Istanbul. Whether he purchased his title of Ağa or was in fact recruited to be a soldier in the "Inside" or "Outside" services of the sultan's household is not known but also does not make a real difference.¹²

Mustafa Ağa's establishment in the *voyvodalık*, however, took place long after his father Abdülvehhab Ağa and his uncle Mehmet Emin Ağa became part of the

6 Salzmänn, *Tocqueville in the Ottoman Empire*, 129.

7 See, for example, Diyarbekir Ahkâm Defterleri I: 1, 4, 8, 12.

8 Salzmänn, *Tocqueville in the Ottoman Empire*, 142; Cengiz Orhonlu, *Osmanlı İmparatorluğunda Aşiretleri İskân teşebbüsü, 1691–1696* (İstanbul: Edebiyat Fakültesi Basımevi, 1963), 18.

9 In the case of Athens he was actually the governor. See Stathi, "An (in) famous governor", 4.

10 İbrahim Yılmazçelik, XIX. yüzyılın ilk yarısında Diyarbakır: (1790–1840): fizik, idari, ve sosyo-ekonomik yapı, (Ankara: Türk Tarih Kurumu Basımevi, 1995), 216.

11 Virginia H. Aksan, "Whatever Happened to the Janissaries? Mobilization for the 1768–1774 Russo-Ottoman War," *War in History* 5/1 (1998): 26–7; Rhoads Murphey, *Ottoman warfare: 1500–1700* (New Brunswick, New Jersey: Rutgers Univ. Press, 1999), 46–8; Aksan, *Ottoman wars 1700–1870: An Empire Besieged*, (Harlow, England: Pearson Longman, 2007), 48–52; Eduard J. Erickson and Mesut Uyar, *A Military History of the Ottomans: From Osman to Atatürk*, (Santa Barbara, California: Greenwood Publishing Group, 2009), 91.

12 Salzmänn, *Tocqueville in the Ottoman Empire*, 155.

kapıkulları in Istanbul. Although the *mukataa* contract cannot be found, archival documents from the treasury of Diyarbakır (Diyarbakır *hazinesi*) point roughly to the time when they bid and won the *mâlikâne mukataa* of the *voyvodalık* of Diyarbakır: in 1731 his uncle, Mehmet Emin Ağa, is mentioned in relation to this investment, and six years later, in 1737, his sons, together with Mustafa Ağa, are all identified as shareholders of the *voyvodalık* of Diyarbakır, represented by a *vekil*, İsmail Ağa.¹³ This demonstrates that the *voyvodalık* tax-farm contract could be divided among several shareholders who had purchased the right to tax whatever farms were under the administrative and fiscal authority of the *voyvodalık*. Since the shareholders did not necessarily reside in the area in which their investments were placed, they needed a representative to handle their interests and to forward them their profits, a representative who would be a *voyvoda* in practice.¹⁴

And indeed, Mehmet Emin Ağa, Mustafa Ağa's uncle, lived not in Diyarbakır but in Istanbul, where he was well integrated into the political scene. He reached the office of *ağa-ı silhadar* (commander of the sword bearers) in the *altı bölük* (second regiment of cavalry troops) of the Porte,¹⁵ and was later appointed to be the *sipahiler ağası*—commander of the first regiment of the cavalry troops of the Porte.¹⁶ His son, Emin Ağazade Hüseyin Ağa, also reached several high positions at the Porte, and in time was appointed *sipahiler ağası*, like his father.¹⁷

At some point Abdülvehhab Ağa, Mustafa Ağa's father, returned to Diyarbakır and established his own household there. This may have been extant in 1710, when he was mentioned as the *voyvoda* of the Diyarbakır customs (*gümrük*). In 1735 he was appointed to be *voyvoda* in practice, though not for long, because he probably died two years later.¹⁸ In Diyarbakır he was considered to be a man of wealth: his real estate was evaluated at over 6,000 *куруş*, and we know he was married twice, either at the same time, or perhaps remarried after the death of the first wife or after a divorce.¹⁹

13 Başbakanlık Arşivi, Bâb-ı Defter-i Baş Muhasebe Diyarbakır hazinesi (hereafter D.BŞM.DBH) 24: 33; D. BŞM.DBH 27: 20, 39, 54.

14 Ariel Salzmann, "An Ancien Régime Revisited: 'Privatization' and Political Economy in the Eighteenth-Century Ottoman Empire," *Politics & Society* 21 (1993): 401–5; Ariel Salzmann, "Privatization and 'public' office: the *Voyvodalık* of Diyarbakır in the Eighteenth Century," *The Turkish Studies Association Bulletin* 16/2 (1992): 203–205.

15 Ariel Salzmann, *Tocqueville in the Ottoman Empire*, 107; Salzmann, *Measures of Empire*, 275.

16 D.BŞM.MHF 12532.

17 Mehmed Süreyya, *Sicill-i Osmanî: Osmanlı ünlüleri*. (Istanbul: Tarih Vakfı Yurt Yayınları, 1996), Salzmann, *Tocqueville in the Ottoman Empire*, 275; as for his son see Süreyya, *Sicill-i Osmanî*, I: 90, III: 694–5.

18 D.BŞM.DBG (Diyarbakır Gümrüğü) 2: 91. Between 1713–1717 documents are missing and therefore we can not say whether or not he was still the *voyvoda*. D. BŞM.DBH 26: 79–90.

19 For the correlation between wealth and polygamous marriage see Margaret L Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo 1770–1840* (Austin: University of Texas Press, 1999), 122–126, 177.

Mustafa Ağa himself already resided in Diyarbakır in 1715 when he purchased and renovated a *kasr* (palace) in the Balıklı neighborhood, probably for his own use. Three years later he bid for the office of *kitaplık*. In 1738, probably after his father's death, Mustafa Ağa became the actual *voyvoda* of Diyarbakır, as well as being a shareholder in the *mukataa* of the *voyvodlık*. Although the position of *voyvodlık* was *mâlikâne*, that is, granted for life, Mustafa Ağa's death did not end his uncle's hold and that of his sons over the desirable tax-farm contract: after Mustafa Ağa's death another agent replaced him as their representative in Diyarbakır—Halil Ağa.²⁰

As for his conjugal family, we learn that he was married to Hamide Hatun, daughter of Abdullatif Ağa, and had no children entitled to his inheritance. Therefore, unlike his father, polygamous marriage or remarriage was not his experience. In this case, Mustafa Ağa's agnates were entitled to inherit. His father was dead, but his uncle Mehment Emin Ağa was still alive. That said, he did not receive any share of the inheritance, at least at first sight. Even more surprising, of Mustafa Ağa's three inheritors, Emine Hatun, his sister, inherited the largest part.

Islamic law left little freedom of choice to the individual over transfer of property, but the rigidity of Islamic inheritance laws was apparently more theoretical than real.²¹ In practice this meant that degree of closeness was more relevant than hierarchy of gender. Families used several strategies in order to maintain wealth or to transfer wealth from one generation to another, decisions that could have major consequences for their success in the future. Since inheritance laws did not specify a time for dividing the patrimony, families and individuals could indefinitely postpone the devolution of property without violating the law.²²

In fact, inheritance strategies and household patterns were closely related. The devolution of Abdülvehhab Ağa's patrimony did not occur until the death of his son Mustafa.²³ We do not know exactly how long after his father's death Mustafa Ağa died and how the patrimony was divided, but the household did not fall apart and family members were still economically dependent on one another. Apparently it was Mustafa Ağa who held the corporate property after his father's death, and became the head of the household in Diyarbakır. By keeping the property and the rest of the communal estates undivided, the family kept a larger pool of readily available resources to support their economic and political agendas, and maintained their large household and high social status.²⁴

20 Ali Emiri, *Tezkere-i Şu'ara-yı Amid*, (İstanbul: Matbua-yı Amidi, 1910–11(1328)); Salzmann, *Tocqueville in the Ottoman Empire*, 155; D.BŞM.DBH 28: 26, 49, 75–78.

21 Haim Gerber, *Islamic law and culture, 1600–1840* (Leiden Boston : Brill, 1999), 64–5, 85, 95, 106, 131–2; Meriwether, *The Kin Who Count*, 155–6; Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge ; New York: Cambridge University Press, 2009), 139.

22 Meriwether, *The Kin Who Count*, 159.

23 Mustafa Ağa's part of His father's patrimony was calculated as part of the total sum. DŞS 315: 76.

24 Meriwether, *The Kin Who Count*, 156.

But obviously things changed after Mustafa Ağa passed away. It appears that there was no male in the family who could sustain the household and maintain its earlier fortune and status. Therefore, protection and help in times of need or economic dependency were no longer something to count on. Tensions over the inheritance or other issues arose, so that a claim was submitted to the court to split the patrimony among the remaining family members. Corporate possessions and debts were divided by avoiding joint ownership and by buying out shares in the property: Emine Hatun, Mustafa's sister, bought the wife's and the mother's shares in a garden and a well²⁵. Conflicts over the patrimony were such that legal interference by the court and subsequently by the central authorities (a supreme decree) was needed in order to resolve the problems raised by their communal ownership. Finally, the enormous sum of 105,000 *kuruş* was deducted from the cash patrimony of Mustafa Ağa and sent as a reconciliation fee to Mehmet Emin Ağa, Mustafa's uncle, by Hasan Ağa, one of his representatives, so that in the final count Mehmet Emin Ağa did receive the bigger part of this patrimony after all.²⁶ The economic wealth that sustained this family and its household for so many years was dispersed, and Mustafa Ağa's household came apart. Mehmet Emin Ağa's household in Istanbul, on the other hand, survived for many years to come, with his sons as successors.

The devolution of the patrimony however, was fairly simple: since it was so large and the number of heirs relatively small, each of the three women received a substantial share. Properties were handed to them in full, with no need to sell or divide, as were the debts allocated to each one, according to the amount they received. This means that the transfer of property probably did not take very long, as it did in other cases where a sale of property was needed.

Interestingly, according to the *tereke* (probate inventory), the house of the *voyvoda* remained undivided for the continuous use of his heirs. Yet, if it was not part of the patrimony to calculate and divide, why was it then registered? It seems that other individuals, who were away, were also concerned with this patrimony and wished to track down every asset they knew about. The Diyarbakırlı poet *Hami-i Amidi* reports that Abdülvehhabzade Mustafa Ağa had purchased a *kasr* in Balıklı neighborhood of Diyarbakır in 1727, and renovated it. Therefore, he was probably the one who endowed this property as a family *vaqf*, though its *vaqfiyye* (endowment deed) cannot be found. It appears that he was deeply concerned for the future of his family or other household members, in the absence of other men in the family in Diyarbakır. Perhaps he feared potential confiscation or wished to secure a property whose ownership was contested. In any case, he used this legal tool to remove part

²⁵ DŞS 315:77.

²⁶ "mütevefa-ı merhumun emval ve eşyası mukbili veresa-ı mezburundan bedel-i musalaha için bi firman-ı aliul hac Mehmed Emin Ağa ittibaidan hacı Hasan ağa'ya teslim" in: DŞS 315: 78. For other examples about Conflicts over the patrimony see: Meriwether, *The Kin Who Count*, 168.

of the patrimony from the effects of the law, and to regulate the transmission of usufruct rights from one generation to another, so that his wife, mother and sister would be able to continue dwelling there after his death.²⁷

Unfortunately the house itself did not survive to tell the tale, but the unique *tereke* of Mustafa Ağa provides an unparalleled opportunity to learn about the physical structure of a *voyvoda*'s residence. This inventory, which differs from most known inventories, lists thousands of items that are sorted according to the house's sections. According to this evidence, Mustafa Ağa's house was a fairly big structure: a two-storey building, with nine rooms, three semi-open ones (*eyvan*), one with an inner pool or a fountain and, probably in addition, a pavilion and a harem—a unique house in size as well as shape. Since the *voyvoda* had only one wife and no children, it is interesting to speculate on who else could have lived there and what uses this massive space fulfilled.

The house was obviously intended for a large social unit. Besides members of his extended family, like his mother, sister, perhaps his father's second wife and his cousin Hasan Ağa, who lived in Diyarbakır,²⁸ other people such as servants (*uşaklar*), companions (*çukadarlar*) and slaves (*köle*) would also have resided in the house. In addition, it was also a professional and public sphere, a place for hosting guests and a base from which to carry out and control all of Mustafa Ağa's business activities.²⁹ The existence of a harem supports this assumption: it fulfilled a need for a protected sphere inside the house, away from strangers and from males who visited on a daily basis.

Yet the harem was more than a way of fulfilling a functional need. The harem emulated the life style of the sultan, and should therefore be seen as a status symbol. In the wider imperial context, this type of residence was found in urban centers, where they were called *konak* (mansion) or *saray* (palace), and were used to house high level functionaries and individuals with high social status. The *voyvoda*'s house in Diyarbakır should be examined with this context in mind and specifically against the background of existing local *konaks*, nowadays mistakenly generalized as "Diyarbakır Evleri," in the sense of traditional old houses of Diyarbakır. The *voyvoda*'s house was a *konak* in some of its architectural characteristics and similar in this sense to other prominent *konaks* of Diyarbakır. Therefore, when the *voyvoda* purchased and rebuilt the house he was also trying to mark his social status and to distinguish himself from those who could not afford a similar residence. As Thorsten Veblen sug-

²⁷ "Balıklı mahalesinde mütevafa-i merhum sakın olduğu bahçeli oda ve harem taksim olunmayıp veresa beynlerinde mevkuf kalmışdır", DŞS 315: 77.

²⁸ He signed many of the *berats* given from the Diyarbakır *hazinesi* at that time period; see, for example, D. BŞM.DBH 27:64, 65,69, 82 (1738) or D. BŞM.DBH; 28: 1, 5, 37 (1739).

²⁹ Coffee room, guest room and *eyvans*, together with tents, flags and weapons among the usual items testify to the house's multifunctional character.

gests, social affiliation defined taste and taste in turn defined social status.³⁰ Within the Diyarbakır provincial context, Mustafa Ağa's house and belongings outshone and out-valued those of most others in the city, as is also reflected in the court records. The *voyvoda* of Diyarbakır was therefore a prominent figure, an elite member of the city and perhaps even of the *vilayet*.

However, social boundaries were marked not only by the house's external appearance. Other means were used as well. One of them was access to mobility and transportation, and the ability to participate in the military sphere. As proof of his connectedness, Mustafa Ağa had a considerable private stable: besides two young foals (*tay*) and eleven mules (*katır*), he also had eighteen riding horses (*at*) and one pack horse (*bargir*).³¹ Riding horses could serve in the battlefield³² or could have practical uses as saving valuable time and effort in the collection of taxes, getting to distant areas and reaching close destinations promptly in emergencies, unlike most others in the vicinity. Pack horses, on the other hand, were used domestically to operate mills or pull carriages, and could be used to supply gunpowder or pull artillery.³³ Horses were thus lucrative in daily life and were considered to be a significant possession. At the beginning of the seventeenth century, in central Anatolia Kayseri, horses were more valuable than average houses.³⁴ Even among the military class of Edirne in the sixteenth and seventeenth centuries, only 25 % show evidence in their patrimonies of horses or mules. Therefore, in addition to having a very important functional role—whether used for fast transportation or as beasts of burden at home or in the battlefield, horses were also a symbol that identified their owner as having high social and economic status.³⁵

Moreover, horses and other beasts of burden were significant presents from one ruler to another or between dignitaries, as a manner of creating diplomatic relations as shown in other historical examples.³⁶ This was also true in the case of the *voyvoda*.

³⁰ Thorstein Veblen, *The Theory of the Leisure Class*, Oxford World's Classics (Oxford; New York: Oxford University Press Inc., 2007), 78–110.

³¹ DŞS 315: 75.

³² Virginia H. Aksan, *Ottoman Wars 1700–1870: An Empire Besieged* (Harlow, England: Pearson Longman, 2007), 70.

³³ Ibid.; Suraiya Faroqhi and Randi Deguilhem, *Crafts and craftsmen of the Middle East: fashioning the individual in the Muslim Mediterranean* (London; New York: IB Tauris, 2005), 154–7; Suraiya Faroqhi, "Camels, wagons, and the Ottoman state in the sixteenth and seventeenth centuries," *International Journal of Middle East Studies* 14 (1982): 523–539; Rhoads Murphey, *Ottoman warfare: 1500–1700*, (New Brunswick, New Jersey: Rutgers Univ. Press, 1999), 21, 36, 75, 161, 232.

³⁴ Suraiya Faroqhi, *Subjects of the Sultan: Culture and daily life in the Ottoman Empire* (London: IB Tauris & Co Ltd, 2005), 149.

³⁵ Ibid.; Ömer L. Barkan, "Edirne Askeri Kassamına Ait Tereke Defterleri (1545–1659)," *Belgeler* 3 (1966): 1–479; Yuzo Nagata, *Materials on the Bosnian notables* (Tokyo: Institute for the Study of Languages and Cultures of Asia and Africa, 1979), 32, 38–9, 48–51, 59, 77.

³⁶ Mustafa Alver, "Türkiye'de İngiliz Atı Yetiştiriciliği ve Haralar," in *Türk Kültüründe At ve Çağadaş*

Mustafa Ağa received roughly eighteen beasts of burden as gifts. Most were given to him “off the record,” for his own use, without the formal procedure of transferring the property legally, as in the case of Abdullah (çeteci) Paşa, the governor of Diyarbakır, who gave the *voyvoda* one horse. Some were approved as *hibbe* (the legal term for a gift) during his lifetime, like the two riding horses given to him by Vezir Memiş Paşa. In another case he presented horses as a gift to the *vezirs*. After Mustafa Ağa died, there was no further use for such an extended stable, and it was disbanded. The horses and other animals were sold or given away as gifts, contributing to the slow dispersal of the household.³⁷

Yet, as Marcel Mauss’s pioneering work shows, gifts should be seen not as one-sided, spontaneous outbursts of generosity but instead as part of a reciprocal system of exchange of goods, in which the act of giving was regulated, obligatory and self-interested, and created a personal bond.³⁸ In some cases it was a euphemism for patronage: patrons gave material benefits and thus disguised their power to give (and to revoke) as freely given gifts. Clients in return provided loyal services disguised as voluntary assistance. The reciprocity was obligatory, and benefits and services had to be rendered more than once in the long run.³⁹

Though it is hard to trace the precise paths of reciprocity in the case of the *voyvoda* and others, it would seem that giving and receiving highly prized livestock, such as riding horses, was motivated by more than just a wish to create a personal bond, and was part of the production of patronage relations. If we take into consideration that such relations are bonds of reciprocity between unequal participants, as Ehud Toledano suggests,⁴⁰ then the nature of these relations becomes apparent: although Mustafa Ağa was a prominent political and social figure in Diyarbakır, he was still lower in rank than Memiş (Mehmed) Paşa or Abdullah Paşa (çeteci), both *valis* of the *vilayet* with the rank of *vezir*. Hence their act of giving cannot be seen as merely a spontaneous act, but as payment for services rendered and in anticipation of more services in return, creating a commitment from Mustafa Ağa that he would undoubt-

Atçılık, ed. Emine Gürsoy-Naskali (İstanbul: Resim Matbaacılık A.Ş., 1995); Nadir Özbek, “Imperial Gifts and Sultanatic Legitimation during the Late Ottoman Empire, 1876–1909,” in *Poverty and Charity in Middle Eastern Contexts* (2003): 203–222; Donna Landry, “Steal of a Turk,” *Prose Studies* 29 (2007): 116, 128; Maria Pedani, “Sultans and voivodas in the 16th century: gifts and insignia,” *Journal Of International Social Research* 1 (2007): 193; Anthony Cutler, “Significant Gifts: Patterns of Exchange in Late Antique, Byzantine, and Early Islamic Diplomacy,” *Journal of Medieval & Early Modern Studies* 38 (2008): 79–101.

³⁷ DŞS 315: 73.

³⁸ Marcel Mauss, *The gift: Forms and functions of exchange in archaic societies* (Cohen & West, 1954).

³⁹ Sharon Kettering, “Gift-giving and patronage in early modern France,” *French History* 2 (1988): 131–151.

⁴⁰ Ehud R. Toledano, *As If Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven: Yale University press, 2007), 109.

edly be called upon to discharge in a time of need. It is interesting to notice, though, that this rule of action was also activated after he died. Not all of his animals were sold for the sake of the inheritance. His heirs handed some of them to other individuals and by that perhaps wished to continue under their protection.

However, Mustafa Ağa by virtue of his office had extensive connections with a variety of people. His social network included a wide range of individuals and groups, which assisted in promoting his goals and agendas in Diyarbakır and beyond. He was economically well established and active in the commercial life of the city and *vilayet*.⁴¹ Although he was not a professional moneylender, he had access to vast amounts of capital,⁴² and he used his financial resources to participate in money-lending, a normative option at the time for financing social and economic activities.⁴³ The picture of these credit relations—loans he was granted as well as debts he owed to other people—illustrates very clearly the regularity of this phenomenon and supports other studies that have found more than once a dissonance between the law and the daily practice: though theoretically the *sharia* forbids the practice of lending money with interest, they have found that the historical reality in the Ottoman cities and provinces proved quite the opposite. Lending money with interest was a legitimate, wide spread phenomenon that surprisingly or not involved Muslims as well as Jews and Christians, and encircled all elements of society even members of the Ulema, as Roland Jennings showed in the 1970s regarding Kayseri in central Anatolia.⁴⁴ Even in the case of Bursa where Haim Gerber has found that loans were bigger and involved sometimes professional money lenders, others were also considerably involved in credit relations.

Among Mustafa Ağa's debtors were high level functionaries, like the *vali* of Diyarbakır, the *vali* of Kerkuk, *beys* of the surrounding *sancaks*, other *voyvodas*, many local or central *kul* officers, and even central functionaries like the *kulağası* and *çavuş emini*. Though our source does not articulate specifically on the issue of interest, financial motives of enlarging one's fortune must have been dominant as motives for

41 The 1,500 *kurus* he lent the people of Zaho and the 400 *kurus* debt of the guild of *esnaf-ı kelekçiyan* are examples that support this understanding.

42 A huge sum of 67,425.5 *kurus* was granted as title deeds and loans (*temasuk, alacaklar*) to 43 different individuals at the time of his death.

43 Ömer L. Barkan, Edirne Askeri Kassamına Ait *Tereke* Defterleri (1545–1659), *Belgeler* 3 (1966): 1–479.

44 Neş'et Çağatay, "Riba and Interest Concept and Banking in the Ottoman Empire," *Studia Islamica* 32 (1970): 53–68; Roland C. Jennings, "Loans and Credit in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient/Journal de l'histoire économique et sociale de l'Orient* 16 (1973): 168–216; Haim Gerber, "Jews and Money-Lending in the Ottoman Empire," *The Jewish Quarterly Review* 72 (1981): 100–118; Haim Gerber, *Economy and society in an Ottoman city : Bursa, 1600–1700*. (Jerusalem: Hebrew University, 1988), 127–147; Murat Çizakça, "A waqf in history and its implications for modern Islamic economics," *Islamic Economic Studies* 6 (1998): 58–68.

his activity. But still almost 20 % of the money loaned was defined as lost debts. This certainly does not seem to suit the notion of reciprocity or of economic rationality and the assumption that he was a shrewd and successful man of affairs. If indeed so, what could his motives for such behavior have been?

Interestingly, Jacques Godbout suggests that in frameworks such as family or society, the feeling of indebtedness is central to the working of the network, unlike in the state or the market based on human equality or equivalent value exchange. When the network functions well, this debt is positive, creating trust and the will to be loyal, rather than distress or alienation.⁴⁵ This description fits pre-modern societies, where terms of individualism, freedom and the liquidation of any obligation are out of the question, more than it does modern societies. In Ottoman Diyarbakır of the eighteenth century acquaintance, belonging and obligation were part of the fabric of society. Mustafa Ağa and his debtors were part of a social network of mutual obligations. Purely financial motives such as enlarging a fortune or motives of reciprocity and the expectation to receive favors in return probably did exist, but Mustafa's financial resources were not marred by unpaid debt but rather enhanced by it, in several ways: the money loaned was a means of circulating money and encouraging commercial activity; it created social loyalty and personal trust; and it established a network through which he constructed an identity of a powerful *voyvoda*, benevolent though not necessarily charitable.

3.2 Conclusion

The personal history of Mustafa Ağa, the *voyvoda* from Diyarbakır, reveals some of the changes and new practices that appeared in the eighteenth-century Ottoman Empire. A *kul* from Diyarbakır, residing in Istanbul, returned to his home town and established his power and household through the post of *voyvoda* purchased by the family. In this he illustrates the socio-political change that Ehud Toledano posits concerning the formation of Ottoman elites.⁴⁶ The process of localization and Ottomanization is demonstrated as a two-stage process in the person of Mustafa Ağa the *voyvoda*. He was first Ottomanized, that is, he established himself in the center as a *kul* through

⁴⁵ Jacques Godbout, "Homo Donator versus Homo Oeconomicus," *Morality and the Meaning of Life: Gifts and Interests* 9 (2000): 23–46.

⁴⁶ Ehud R. Toledano, "The Emergence of Ottoman Local Elites (1700–1900): A Framework for Research," in *Middle Eastern Politics and Idea: A History from Within: Essays in Honour of Albert Hourani*, eds. Ilan Pappé & Moshe Ma'oz (London: New-York, Tauris Academic Studies, 1997), 145–162. See also: Jane Hathaway, *The politics of households in Ottoman Egypt: the rise of the Qazdaglis* (New York, NY: Cambridge University Press, 1997); Dina Rizk Khoury, *State and provincial society in the Ottoman Empire: Mosul, 1540–1834* (Cambridge Cambridge University Press, 1997).

his attachment to his uncle's household, and then reinserted into the province of Diyarbakır as one of the local elites, through his post as *voyvoda*.

In some of the Ottoman provinces in the eighteenth century, the establishment of a hegemonic household occurred through the post of *vali*.⁴⁷ In Diyarbakır, none of the individuals appointed to this lofty position managed to take over the governorship and to establish their power. Rather, *valis* in eighteenth-century Diyarbakır came and went, carrying out their duties in the *vilayet* for short terms.⁴⁸ Perhaps, since governorship was still in the hands of the central government in Diyarbakır, the powerful position to be in was that of *voyvoda* and *voyvodahk*. *Voyvodas* enjoyed full access to financial resources and were freer to manage their own affairs.⁴⁹

Still, Mustafa Ağa was part of a wider network or households whose center was located in Istanbul, that of Mehmet Emin Ağa, his uncle. Together with his uncle and cousins Mustafa Ağa invested money in buying the *mâlikâne mukataa* of the *voyvodhk* of Diyarbakır, a place they knew the ins and outs of, and which they found potentially profitable. Their acquaintance with the place as well as their personal connections probably led them to invest in their hometown. Since Mehmet Emin Ağa did not reside in Diyarbakır, his brother and later his nephew became their representatives and actual *voyvodas*, besides being shareholders in the *mukataa*. The two households were thus connected by the twin ties of family and professional-financial partnership. This served both sides' interests: the Istanbul household could help when an opportunity came along, such as an important *mukataa* contract for sale, or key posts opening up; while having a loyal representative residing on site could certainly raise its profit potential.

However, the autonomous nature of the *voyvoda*'s household can be seen as well: some money and goods of Mustafa Ağa were found in the possession of a *sarraf* in Istanbul. In the eighteenth century, capital kept with *sarrafs*, who served as financial agents, money lenders and bankers, was essential for all transactions made between the center and provinces.⁵⁰ They supported the *mâlikâne*-holders by providing credit and making payments to the central treasury; financed the sub-contractors (*mültezim*) by paying the *mâlikâne*-holder the annual installment in advance; and pro-

⁴⁷ Toledano, "The Emergence of Ottoman Local Elites", 145–162.

⁴⁸ For their attempts to create some stability and perhaps a hegemonic rule in the 17th century see: Tsameret Levy-Daphny, "A Forgotten Ottoman Vilayet: Diyarbakır and Its *Vali*-Households in the Seventeenth Century " in *Osmanlı'dan Cumhuriyet'e Diyarbakır- II. Uluslararası Diyarbakır Sempozyumu* (2006), eds. Bahaeddin Yediylidiz and Kerstin Tomenendal (Diyarbakır: DiyarbakırValiliği, 2008). As for the 18th century see: Salzmann, *Tocqueville in the Ottoman Empire*, 260–2; Abdulvehap Yıldız, "135/313 Nolu Şeriye Siciline Göre (1722–1798) Yıllarında Amid (Sancağında Sosyal ve Ekonomik Durum)," Yüksek Lisans Tezi (Bursa: Uludağ Üniversitesi, 1994).

⁴⁹ Canay Şahin, "The Rise and Fall of an Ayan Family in Eighteenth Century Anatolia: The Caniklizades (1737–1808)" (Ph.D Thesis, Bilkent University, 2003).

⁵⁰ Şahin, "The Rise and Fall of an Ayan Family", 95–8.

vided money (*caize*) to the treasury on behalf of an office-holder in order to secure an office or to be assigned one, especially one that could become a source of wealth. In short, alongside their traditional roles as moneylenders and moneychangers, *sarrafs* served as intermediaries and provided crucial bridging loans to the Ottoman elite. The fact that Mustafa Ağa had money sent to the *sarraf* suggest that he wished to secure his post or have access to other posts in order to allow him access to further sources of revenue. As several scholars have shown, the rise of local power and localization did not lead to a rupture with the center, and Mustafa Ağa's case provides further proof of this. Control over resources was still in the hands of the central government, though the new policy was an attempt to attract both state and non-state elites to undertake public responsibilities. Therefore, state functions were performed by the "private sector" that received incentives through a system of institutionalized rewards. One of them was the *voyvoda* and the *voyvodalık*, which absorbed much of the resources of the provincial budget, like the *defterdar* of Damascus, or the *muhasıllık* of Aleppo. The *voyvoda* was thus part of a new administration that established checks and balances over the power of the *vali*, and cemented the new dynamic relations between the center and provinces.⁵¹

Unlike the *valis* of Diyarbakır, who were frequently replaced, the *voyvoda* could not be changed so easily; the position and its holder were well established in office and in the province. Through the mechanism of the *Mâlikâne*, *Voyvodas* like Mustafa Ağa, received autonomy, power and esteem in Diyarbakır, and were evidently less supervised by the central government. As noted, after Mustafa Ağa died, his heirs were able to take over his patrimony in Diyarbakır before any measures of confiscation were taken, although they failed to secure the possessions he had in Istanbul. This shows a significant difference between *voyvodas* in the provincial administration and the men who served as a *valis*. In terms of financial abilities, political strength and influence, pashas and *vezirs* enjoyed better access to central decision making and therefore had more options and power in their political game. But while they lived and died under the watchful eye of the central administration, and were subjected to a continuous examination of their loyalty,⁵² which was designed to curb their social and political power, men in the second administrative tier who were located in the provinces, like Mustafa Ağa, enjoyed greater autonomy and, more importantly, maintained it to the benefit of their relatives. Perhaps by character Mustafa Ağa was more suited to the stable and settled life of a relatively minor grandee, without the danger of losing one's money or, worse, one's head. For him, then, the question whether to be a locally established *voyvoda* or a high flying *vali* could have been one of personal preference and not necessarily a result of failing to

51 Salzmann, "Privatization and "Public" Office", 203–205.

52 Barbir, "One Marker of Ottomanism", 135–146; Dror Zeevi and Ilkim Buke, "Banishment, Confiscation, and the Instability of the Elite Household" in this volume.

climb higher in the political hierarchy. In this path, he had more control over how he would spend his life, how he would die, and what would happen to his family—and his possessions—after his death.

Part II: **Unpacking Law and Culture**

Nimrod Hurvitz

4 Where Have All the People Gone? A Critique of Medieval Islamic Historiography¹

4.1 Introduction: The Lacuna

Religio-political movements are an important, yet neglected chapter in the history of Muslim societies. From the inception of Islam until the twenty-first century, Muslims have expressed their political grievances and intellectual controversies through religio-political movements. Starting with the Shi'is and the Khawārij in the first century of Islam, movements offered innovative interpretations of Islam, challenged the political establishment and introduced new social structures. The Shi'is and Khawarij, which were theological and political movements, were followed by the development of *madhāhib* (schools of law), Sufi brotherhoods, and self-styled purifiers of the faith such as the Muwahhidūn and Wahhābiyya. These are just a few of the hundreds of movements that combined social, political and religious agendas in order to reform Muslim societies. However, although scholars of Islam are aware of the important roles that these movements play, they rarely treated the movements' social and political dimensions as objects that merit monograph studies. Instead, they focused on the ideas that members of these movements articulated, while ignoring the contexts in which they were written.

Yet, if we want to understand how and what religio-political movements contributed to Islamic history, we cannot limit our inquiry solely to the realm of ideas. Instead, it is necessary to add studies of their social characteristics and their political involvement. This essay will depict and characterize the present approach to such movements, and will highlight the existing lacuna in the scholarship. It will not put forth new empirical data regarding these movements, but it will offer a new angle of research from which to approach them. At its center rests the concept "ideological communities". The critical addition that this term provides is the notion of "communities," and the need to study the social dimension of movements that up until now have been viewed by scholars as producers and consumers of ideas and not as players in social and political processes. Such an approach would channel scholars to take a close and thorough look at the leaderships and networks of these movements. It would also bring to the fore such questions as tensions and struggles within

¹ This article evolved out of a conference paper given in honor of Professor Ehud Toledano. I would like to thank the organizers for inviting me. I would also like to thank Professor Toledano for introducing me to the many facets of social history.

the movements, personal ambitions and clashes, and how individuals and trends within these movements constructed their power. Furthermore, it would direct scholars to examine in detail how members of the community communicated with the rest of society—where and how they succeeded in disseminating their visions of Islam. Hence, once we emphasize the communal dimension of religio-political movements we take into account a variety of social interactions that enable us to get a much better understanding of Islamic history.

Due to the tendency of scholars to neglect the social and political dimension of such “ideological communities,” they have effectively erased one of the most important aspects of Islamic social and political history. Whereas anthropologists and historians have studied kinship groups and households, as well as social groups such as slaves, *dhimmis*, and women, and even informal associations that have been characterized as “acquired loyalties” and “loyalties of categories,” they did little to investigate and comprehend the social dimensions of communities that seem to be based mainly on ideological and religious foundations.² As a consequence we possess only rudimentary accounts of historical forces that were pivotal and determined the nature of Islamic faith and societies. At present, the history of Islam is written and rewritten with huge lacunae of information in vital areas of knowledge.

This essay will survey the state of scholarship of two very different types of movements: Shiʿi communities and Sunni schools of law (*madhāhib*). Politically they belong to opposite ends of the spectrum. Whereas Shiʿism came to include the biggest and most powerful opposition movements, the *madhāhib* were Sunni movements that rallied behind Sunni leaders. However, methodologically and historiographically, they shared a number of features. Historically, both the Shiʿi movements and the *madhāhib* were huge “ideological communities” that were formed in the first centuries of Islam and are still part of the Islamic social structure in the twenty first century. Despite their social and political presence, neither has been studied by scholars of medieval Islam as communities and therefore we do not possess a comprehensive social or political history of either. Furthermore, it will be argued that underlying the tendency to write about doctrine and ignore the historical context in which doctrines are articulated and interpreted, there is a methodological assumption that reifies ideas and marginalizes ephemeral historical events. The purpose of this essay is to offer a detailed exposition of this state of scholarship.

² Roy Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton University Press, 1980).

4.2 Historiography of the Shi`a

Shi`ism is an umbrella term that refers to several currents of thought such as the Zaydiyya, Imamiyya-Ithna `Ashariyya (which will be labeled as “Twelver” Shi`ism despite the fact that it became “Twelver” only from the end of the ninth century when the twelfth Imam disappeared), and Isma`iliyya, all of whom share the belief that Ali and his kin were the rightful successors of Muhammad. In the seventh century (first Hijri century), Shi`ism was barely more than a movement that expressed the political grievances of Ali and his followers.<sup>3</sup> In the eighth century (second Hijri century) the potential claimants to leadership of the Shi`i movement contested each other and Ali’s followers disbanded into numerous sub-streams and splinter groups, among which were the Zaydiyya and Twelvers. Concomitantly, Shi`i scholars began to articulate a wide array of theological beliefs, that came to be the basis of the various Shi`i belief systems. By the ninth century (third Hijri century) a new important current called the Isma`iliyya was established and Shi`i movements constituted the dominant political and spiritual opposition to the Abbasid regime and the evolving Sunni orthodoxy.

The social make-up of these movements was unique and interesting. Most Shi`i sub-streams were led by the genealogical aristocracy of Islam, i.e., the Prophet’s descendants. This frustrated elite that felt it was deprived of the position of leadership it deserved, attracted the malcontents of early Islamic societies, oftentimes, new converts to Islam who were also dispossessed of their lawful rights. Together, the nascent Shi`i communities were composed of frustrated elites and the oppressed masses. The potent combination of an elite with high social standing and large numbers of oppressed masses created a group that generated waves of political upheaval.

This essay will focus on Western writings about the Twelvers. This current of Shi`ism has come to the forefront of scholarly attention ever since the Iranian Revolution and has therefore been the subject of a large number of studies.<sup>4</sup> For the most part, Western scholarship of the Twelvers reflects the characteristics of the scholarly approach to other branches of Shi`ism, and therefore it suits the purpose of this study.

³ The strictly political nature of early Shi`ism has been pointed out by many scholars. Note for example the statement by Hossein Modarressi, *Crisis and Consolidation in the Formative Period of Shi`ite Islam* (The Darwin Press, 1993), 4: “Until the end of the first century of the *Hijra*, however, it [Shi`ite movement] did not distinguish itself from the main body of the Muslim community except by the mentioned political tendency.”

⁴ On the impact of the Iranian Revolution on the pace and direction of academic scholarship see Edmund Burke III and Ira M. Lapidus, eds., *Islam, Politics, and Social Movements* (University of California Press, 1988), *xiii*. It should be mentioned that Isma`ili studies have a small group of scholars that have been publishing excellent work. One of the outstanding achievements of this group of scholars is the tome by Farhad Daftary, *The Isma`ilis, their History and Doctrines* (Cambridge University Press, 1992). This study, which examines both political and doctrinal history, is a model for the kind of scholarship the religio-political movements should publish.

The scholarship of the early Twelver current of Shi`ism has focused on two areas. The first is the formation of Twelver doctrine at the turn of the seventh century. The second was the transformation of these doctrines during the Occultation (the end of the ninth century). The early and seminal article that addressed the formative stage of Twelver Shi`ism was written by Marshal G.S. Hodgson, "How did the Early Shi`a Become Sectarian?"<sup>5</sup> Hodgson claims that there is a need to revise the account of the formation of Shi`ism. He begins with a clear historiographical criticism: "The early Shi`a is no longer to be viewed from the standpoint of later Imamism".⁶ Meaning, the projection of the mature Twelver doctrine ("later Imamism"), back to the first century of Islam, when the doctrines of all the currents and movements were blurred and inchoate, is an anachronism. Since such backward projection is out of place, Hodgson observes that the challenge that modern scholars of Shi`ism face was "how those very principles [of mature Twelver doctrine] could have arisen out of the early situation".<sup>7</sup> His answer focuses on two elements: external intellectual systems, known as the Ghulāt (extremists), whose ideas circulated in pre-Islamic Mesopotamia and Ja`far al-Sādiq's circle.

Hodgson's trajectory of inquiry is picked up by Etan Kohlberg, a leading authority of Shi`i intellectual history, whose close readings of Shi`i texts enabled him to trace the development of Imami ideas. In a number of studies Kohlberg furnished the empirical evidence that Ja`far al-Sadiq (the sixth Shi`i imam) and his circle articulated a great deal of the ideas that we identify today with the Twelvers.⁸ However, Hodgson's first point, that is, that the Ghulāt left a strong mark on Imami thinking, was not examined. Another, perhaps more significant area that was not investigated was the social characteristics of the early Shi`i movements. We know that Ja`far al-Sadiq and most of the *imams* were surrounded by politically active circles that clashed with each other. This would become very clear every time an *imam* died and the community had to decide on his successor. Although this characteristic of Shi`ism was mentioned by modern historians, it was never the subject of a thorough study.

The second area that Western scholars have examined closely is the doctrinal transformation that occurred after the death of the eleventh Imam.⁹ Up until the

5 Marshal G. S. Hodgson, "How did the Early Shi`a Become Sectarian?" *Journal of the American Oriental Society*, 75 (1955): 1-13.

6 Hodgson, "Early Shi`a", 1.

7 Ibid.

8 Etan Kohlberg, "Some Imami-Shi`i Views on *Taqiyya*", *Journal of American Oriental Society*, 95 (1975).

9 For a discussion related to the authority of the Shi`i community's leaders see Abdulaziz Abdulhussein Sachedina, *The Just Ruler (al-sultan al-`adil) in Shi`ite islam, The Comprehensive Authority of the Jurist in Imamite Jurisprudence* (Oxford University Press, 1988); Said Amir Arjomand, "The Consolation of Theology: Absence of the Imam and Transition from Chiliasm to Law in Shi`ism", *The Journal of Religion*, 76:4 (Oct. 1996): 548-71; Said Amir Arjomand, "Imam Absconditus and the Beginnings

middle of the ninth century the community of the Twelvers was shaken after the death of each Imam, because it was followed by struggles between several candidates who claimed they deserved to be the next Imam. However, after the death of the eleventh Imam, the shock waves that spread among the Twelvers were even more unsettling, since there was no one to claim the position. This unprecedented political situation led to an intellectual and ideological crisis. As a consequence, the structure and beliefs of the Shi'i community underwent far reaching changes. One of the most detailed and insightful descriptions of this period, is the first part of Hossein Modarressi's *Crisis and Consolidation*.¹⁰ In it he combines summaries of the theological positions held by different currents that rose after the deaths of different Imams, particularly after the death of the eleventh Imam Hasan al-Askari, with economic, social, and personal circumstances that left their mark on the different sects and their beliefs. He also observes that we find in the sources of the Twelvers sections in which they themselves "tried to find an economic basis for this split in the Shi'ite community".¹¹ These efforts indicate that the leaders of Twelver Shi'ism were not naïve, since they realized that the fragmentation of the Twelver community was influenced by personal and socio-economic motivations and alliances, and not merely by theological debates. Yet, despite this insight and despite the existence of several other inquiries about the crisis that the Shi'is underwent after the disappearance of the Imam, there is a dearth of studies that focus on the social and political dimensions of this period.¹²

In recent years two scholars have researched how Twelver worldviews are intertwined in Twelver social history. One of them, Liyakat N. Takim, focuses on the elite that surrounded the Imams, and advances our understanding regarding the social and political developments that occurred around them.¹³ Takim's contribution lies in his detailed presentation of the *Rijal*, the men who surrounded the Imams and often served as intermediaries between them and the community. These intermediaries have been recognized as crucial players in Twelver history ever since the middle of the eighth century. Although Takim's study is an important contribution to the social history of Twelver Shi'ism, the study does not single out social aspects and does not dedicate its full attention to them. In a second work, Maria Massi Dakake examines

of a Theology of Occultation: Imami Shi'ism Circa 280–90 A.H./ 900 A.D.", *Journal of the American Oriental Society* 117:1 (Jan-March, 1997): 1–12; Verena Klemm, "The Four *Sufara*' of the Twelfth Imam: On the Formative Period of the Twelver Shi'a," in *Shi'ism*, ed. E. Kohlberg, 135–152.

¹⁰ Modarressi, *Crisis and Consolidation*, 1–105.

¹¹ *Ibid.*, 62.

¹² It should be emphasized that the general contours of the social background to doctrinal developments appear in greater or lesser detail in many of the books and articles that deal with the period. However, there is a significant difference between works that repeat a rudimentary narrative and works that go beyond that and scrutinize the facts critically with an attempt to analyze the narrative.

¹³ Liyakat N. Takim, *The Heirs of the Prophet, Charisma and Religious Authority in Shi'ite Islam* (State University of New York, 2006).

how “Shi`ite awareness of their own group” evolved.<sup>14</sup> Although this study is a valuable addition to Shi`i scholarship, it focuses on Shi`i thought about “their own group” and less on the social dynamics within the community. As a consequence, it adds little to our understanding of the social history of the Shi`i community.¹⁵

In short, the level and extent of knowledge regarding Twelver doctrine among Western scholars is relatively good. It has been studied by some of the leading Islamists of the last few decades, who have unraveled several of the most complex concepts in the Twelver worldview. This feature of modern Shi`i scholarship has been pointed out by scholars of Shi`ism, such as Andrew Newman who wrote “...scholars such as Madelung, Kohlberg, and Elias, Corbin, Nasr, Calder and Amir-Moezzi have taught the West much about the distinctive doctrines of the faith and, especially, drawn attention to the textual bases of those doctrines...”¹⁶ These scholars traced the development of Twelver ideas, discerned foreign influences, and depicted the debates they aroused. The cumulative achievement of these studies was to sketch a comprehensive narrative of the Twelver worldview. However, because modern scholars have made so much progress in our understanding of the doctrinal aspects of Twelver doctrine, we tend to identify Shi`ism solely with its doctrines while ignoring other facets of this movement.

The inquiries of the socio-political dimensions of Shi`ism did not fare as well as the study of its doctrine. Yet Shi`ism, as is well known to any student of Islamic history, was not an intellectual exercise. Shi`i movements led the political opposition to the ruling dynasties and made political demands, often through violent uprisings. Ever since the middle of the seventh century, Shi`i leaders led revolts against the Umayyad and later the Abbasid dynasties. The first major rebellion was instigated by Mukhtār, whose followers conquered Kufa in the year 686. His success was short lived—his army was defeated within a few months by an Umayyad general, and a short time later (687) he himself was killed. A few decades later, Zayd b. `Ali b. al-Husayn (d. 740) led another failed revolt in Kufa. However, despite his defeat, his followers established the Zaydi movement, and continued to revolt against the Abbasids. By the end of the ninth century the Zaydis moved to the periphery of the Islamic world, the mountains south of the Caspian Sea and Yemen, where they established independent dynasties. Another group of militant Shi`i movements were known as the Isma`ilis, which began their military operations in the deserts of Syria and Iraq. After a few decades they established two dynasties, one, the Qarmatis (Qarāmīta), in the north-

¹⁴ Maria Masse Dakake, *The Charismatic Community, Shi`ite Identity in Early Islam* (State University of New York Press, 2007).

¹⁵ Dakake, 2.

¹⁶ Andrew J. Newman, *The Formative Period of Twelver Shi`ism* (Curzon, 2000), xviii. A similar assessment appears in Maria masse Dakake, *The Charismatic Community, Shi`ite Identity in Early Islam* (State University of New York Press, 2007). Dakake mentions a similar list of names (p. 2), that made sense of “obscure and difficult aspects of early Shi`ite theology.”

ern part of the Arabian Peninsula, the other, the Fatimids, in North Africa. In the early tenth century the Qarāmita were the most powerful force in north Arabia and south Iraq. They even succeeded in stealing the Black Stone from the Ka`ba in Mecca. The Fatimids went on to build a powerful empire that ruled most of North Africa.

Throughout the course of the tenth century Isma`ili dynasties continued to fight and conquer parts of the Abbasid Empire. Other Shi`i dynasties came to rule large areas of the Islamic world. The most dramatic conquest was by the Buyids who took over Baghdad, the capital of the Abbasid Empire, and downgraded the caliph into a politically ineffective figure. At that point the Shi`is were the rulers of most of the Islamic world. Due to these developments this period has been dubbed the “Shi`i century,” reflecting their political might. Within three centuries the Shi`is were transformed from a cluster of opposition movements into the ruling elites of most of the Islamic world.

Medieval Muslim historians were fascinated by the struggle between Shi`ism and Sunnism, which would determine the nature of Islam, and dedicated a great deal of attention to its details. For example, historians of the caliber of Tabari wrote hundreds of pages about Mukhtar’s and Nafs al-Zakiyya’s rebellions. This is to be expected, due to the fact that these rebellions and the dynasties that the Shi`is established determined the history of Islam. By contrast, modern scholars nearly ignore the social and political histories of Shi`i movements.

As a result, despite the far reaching impact of these events on the history of Islam, and regardless of the abundance of sources, we do not have monograph-length studies or analyses of the most significant events in the history of Islam. We do not know much about the reasons for success or failure of any of the sides or how close the defeated rebels were to achieving their goals. The little that we do know concentrates on the caliphs and how they subdued the rebellions. In other words, modern historians who wrote about these rebellions usually viewed them from the angle of the caliphs. Hence, two points can be made about accounts of the political aspects of Shi`ism: First, the topics it covers received minimal treatment; second, they ignore a wide spectrum of issues since they examine the political events from the point of view of the caliphal courts that clashed with the Shi`is. What Modern scholars have not written is a history of these rebellions as they were seen from the perspective of the rebels themselves.

However, the most significant lacuna was not the sketchy accounts of the rebellions, but rather the nearly complete neglect of social history. In other words, the most important element of the struggle between the Shi`is and the Sunnis were the masses and the battle over their hearts and minds. The success and failure in this area was the factor that determined the power relations and influence of Shi`ism and Sunnism. One of the most fascinating developments in this context was the failure of the Shi`i elites that ruled large parts of the Islamic world during the tenth century, to win over the lay Sunni believers to Shi`i Islam. On the other hand, it was during the first three centuries of Islam, when the Shi`is were persecuted all over the Umayyad

and Abbasid Empire, that they succeeded in persuading new adherents to join them. These two surprising historical facts beg a set of questions about the effectiveness of propaganda and the extent to which elites can influence the beliefs of the masses.

The importance of the social dimension does not derive solely from its impact on power politics. It is significant in and of itself, because it enables us to inquire about how “ideological communities” function. By focusing on the social dynamics of such communities we can examine how they were established, who were their leaders and what kind of characteristics were ascribed to them (which in the Shi`i case is very unique), the networks of scholars, how their congregations functioned, what kind of lay believers they attracted, and what kind of interactions did the Shi`is have with other Muslims that surrounded them. These and similar questions need to be raised if we are interested in exploring the tenacity and impact of the Shi`is on Islamic history.

Another aspect that arises out of the social perspective is the interaction between society and doctrine. Perhaps the most ubiquitous aspect of this interaction is the gap between social reality and doctrinal ideals. An excellent example of this incongruence is brought to relief in an article by Etan Kohlberg. While writing about the Imams and their adherents Kohlberg observed that the Imams delegated authority to scholars, and that sometimes “[T]he independence of local scholars appears [...] to have gone beyond the Imam’s wishes”.¹⁷ So much so, that scholars from Qumm “tended to play down the extent of the Imam’s knowledge”. A leading scholar and leader of the Shi`i community in Qumm went so far as to decide “on the orthodoxy of particular individuals.” From these bits of information, along with the works of Modarressi and Takim, it is evident that there was a large gap between the image of the infallible Imam in the texts, and his actual authority and ability to lead the community or determine its beliefs.¹⁸

The uneven application of historiographic attention, i.e., the intense study of doctrinal history as opposed to the scanty coverage of political and social histories of the Shi`i movement, reveals a methodological assumption. Historians of Shi`ism approach their subject as if ideas and beliefs are the essence of a movement’s history. What is more, they assume that we can understand ideas as closed systems detached from the people who articulate and interpret them. This type of history of ideas, that is oblivious to contexts, needs to undergo a thorough change if we wish to understand what Shi`ism contributed to Islam and how it left its mark on it.

17 Kohlberg, “Imam and Community”, 40.

18 Modarressi, *Crisis and Consolidation*, 3–105; Takim, *The Heirs of the Prophet*, 78–180.

4.3 Historiography of the *Madhāhib*

In contrast to opposition movements such as the Shi`a and Khawārij, the Sunni *madhāhib* (schools of law) cooperated with the rulers and can be considered part of the religio-political establishment of Islam. For the most part, the jurists who stood at the head of the *madhāhib* and their followers called for complete obedience and loyalty to the rulers.

The *madhāhib* were mass movements that evolved out of scholarly circles, and by the tenth century came to include every Muslim. Each of these *madhāhib* had congregations in various cities and towns inhabited by Muslims. The members and leaders of the *madhāhib* travelled to centers of learning and wrote each other letters, and in so doing transformed the *madhāhib* into trans-regional organizations that spanned the whole of the Islamic world. In each congregation the *madhāhib* had local leaderships that often served as patrons and stood at the head of influential local networks.¹⁹ Each congregation had its own mosques and from the eleventh century they established separate institutions of education (*madāris*). They also had separate courts of law that passed judgment in accordance with their distinct doctrines.

The appearance of the first *madhāhib* in the eighth century altered the social structure of Islamic societies by creating a new type of social association that is based on a legal outlook. Up until that point the only “ideological communities” that were established were Shi`is and Khawārij, which were theologically and politically oriented movements. The expansion of jurists’ circles into mass movements that came to include all of the lay Muslim believers, introduced a new type of “ideological community” into the Islamic social matrix. At the same time, these new entities were grafted upon pre-Islamic divisions of society such as families and tribes. Ira Lapidus, one of the leading social historians of medieval Islam, described this development in the following manner:

In an urban context the schools of law and Sufi brotherhoods served as confessional collectivities which could recruit individuals across the lines of existing community structures and unify smaller-scale family, clan or residential collectivities into larger units...But Muslim religious associations could also operate wholly within the frameworks of existing collective units. Schools of law...gave previously existing collectivities an Islamic identity.²⁰

¹⁹ For a general overview that deals with the social dimensions of the scholars in Baghdad see Daphna Efrat, *A Learned Society in a Period of Transition, The Sunni Ulama' of Eleventh-Century Baghdad* (State University of New York Press, 2000). For one of the most fascinating primary sources on the interactions among members of a *madhhab* see George Makdisi, *Autograph Diary of an Eleventh-century Historian of Baghdad*, BSOAS 1956–57.

²⁰ Ira Lapidus, *A History of Islamic Societies* (Cambridge, 1988), 232–233.

On the whole, the new “ideological communities” did not clash with the ancient kinship groups. They were integrated into the existing social structure. However, it still remains to be studied how these newly formed social groups merged with the existing social associations.

Due to the size of their following the *madhāhib* acquired political clout, and were often active in local and regional politics. In Iran, between the tenth and twelfth centuries, there were numerous struggles between two schools of law—Hanafis and Shāfiʿis—over control of major cities. These feuds caused considerable damage to the cities of Iran such as Isfahan, Ray and Nishapur.²¹ In Baghdad, the Hanbalis confronted a number of ideological trends and movements such as the Shiʿis and various groups of theologians. The most notorious of these confrontations were their attacks on the Shiʿi quarter, Karkh. Another important competition between two *madhāhib*, though much less violent, occurred in al-Andalus between the Awzaʿis and the Mālikis. After several decades in which they stood side by side with the Awzaʿis in al-Andalus, the Mālikis came to be the dominant *madhhab* in the Iberian Peninsula.²² The internal competition between the *madhāhib* reveals a different type of political activism than that of the Shiʿis. Instead of threatening the rulers, the *madhāhib* were focused on inter-communal tensions. These sort of clashes will resurface every once in a while and will evolve into a widespread pattern of conduct that permeates Islamic societies to this day.

Though they differ in their political conduct and roles, the Shiʿi movements and the *madhāhib* have been studied with a similar set of methodological tools: Modern scholars focus on their doctrines and intellectual achievements, while relegating the social and political dynamics of these movements to the sidelines. In the sphere of law, modern scholars have directed most of their attention to doctrine and much less so to its institutions or the interaction between law and society. This is particularly true in the case of the *madhāhib*, whose social features are one of their most significant aspects. Starting with Goldziher’s study of the *Zahiris*, students of the *madhāhib* focus primarily on doctrinal matters.²³ Schacht’s monumental study of Shafiʿi, which has loomed over the field for decades, also concentrates on doctrine.²⁴ This trajectory of study, in which scholars focus on the legal thought as it appears in the work of a jurist, text or *madhhab*, has continued to the present time, as new

21 Richard Bulliet, *The Patricians of Nishapur* (Cambridge, Mass., 1972), 28–46; Wilfred Madelung, *Religious Trends in Early Islamic Iran* (State University of New York Press, 1988), 26–38.

22 On the introduction of the Maliki *madhhab* into al-Andalus see Alfonso Carmona, “The Introduction of Malik’s Teachings in al-Andalus”, in *The Islamic School of Law, Evolution, Devolution and Progress*, eds. Peri Bearman, Rudolph Peters and Frank E. Vogel (Harvard University Press, 2005), 41–56; and Maribel Fierro, “Proto-Malikis, Malikis, and Reformed Malikis in al-Andalus” in *The Islamic Schools of Law*, eds. Bearman, Peters and Vogel, 57–76.

23 Ignaz Goldziher, *The Zahiris, their Doctrine and their History*, trans. Wolfgang Beng (Brill, 1971).

24 Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford, 1950).

generations of scholars grapple with the intricacies of legal doctrine.²⁵ A somewhat different approach to doctrine that focuses on socio-legal themes such as dietary law, rebellion, tolerance, and legal methodology, has also developed.²⁶ Together, all these studies continue to advance our understanding of the vast and complex sub-fields of Islamic legal doctrine.

At the center of the historiography of Islamic law stands the master narrative composed by Schacht.²⁷ In this overview of the development of Islamic law, Schacht delves into social and political factors that shaped the law. However, his treatment of the *madhāhib* is terse and continues to assume that intellectual matters were the driving force behind their creation. In the past two decades a number of works have challenged Schacht's narrative. Arguing that one of the most significant features of *madhāhib* is the ability of jurists to attract masses of adherents that congregated around their circles, these critical articles claim that the history of the *madhāhib* must include the social developments of the *madhāhib*.²⁸ Other studies illustrated how these political and social factors impacted upon the dynamic of *madhhab* formation.

Like the historiography of Shi'ism, the general outlines of the social and political histories of the *madhāhib* are known. Their inception and dissemination are documented and appear as given facts in a variety of works.²⁹ Over a decade ago an effort has been made by Christopher Melchert to summarize the known facts about

25 Jonathan Brockopp, *Early Maliki Law, Ibn Abd al-Hakam and his Major Compendium of Jurisprudence* (Brill, 2000); Yasin Dutton, *The Origins of Islamic Law: The Qur'an, the Muwatta' and Medinan 'Amal*, (Curzon, 1999).

26 On dietary law see Michael Cook, "Early Islamic Dietary Law", *Jerusalem Studies in Arabic and Islam*, 7 (1986); On rebellion see Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge University Press, 2001); On tolerance see Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith relations of Muslim Tradition* (Cambridge University Press, 2003); On methodology see Joseph Lowry, *Early Islamic Theory: The Risala of Muhammad ibn Idris al-Shafi'i* (Brill, 2007); Felicitas Opwis, *Maslaha, and the Purpose of the Law, Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Brill, 2010).

27 Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964)

28 At the heart of Schacht's approach was the concept of "ancient schools of law" which assumed that their unifying bond was regional legal doctrine. The revisionist approach argues that the regional legal doctrine did not exist and that the *madhāhib* emerged from circles of jurists and students. Hence, the emphasis is social rather than doctrinal. See Nimrod Hurvitz, "Schools of Law and Historical Context: Re-examining the Formation of the Hanbali *Madhhab*" *Islamic Law and Society* (2000): 37–64; A very similar critique appeared a year later, Wael Hallaq, "From Regional to Personal Schools of Law? A Reevaluation", *Islamic Law and Society* (2001): 1–26.

29 For general overviews see Schacht, *Introduction*; Noel J. Coulson, *A History of Islamic Law* (Edinburgh at the University Press, 1964); Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge University Press, 2005); For a more focused study on the dissemination of the *madhāhib* in Iran see Wilferd Madelung, *Religious Trends in Early Islamic Iran* (State University of New York Press, 1988).

the formation of the *madhāhib*.³⁰ However, more than anything else, Melchert's work reflects the paucity of our knowledge as he perpetuates the long standing inaccuracies of Schacht's narrative. In a long and detailed critique Wael Hallaq writes:

In this 1997 work, Melchert accepts the existence of regional schools, and in at least one full chapter, discusses the transformation "from regional to personal" schools...Melchert's explanation is an attempt to solve a non-existing problem and in a less than satisfactory manner... My concern here is to show that no such transformation occurred, because there were in fact no regional schools to begin with.³¹

Hallaq's main point is that Melchert's study relies on well known, yet inaccurate and unconvincing descriptions of the history of the *madhāhib*. His most emphatic point is that Melchert's narrative repeats the unfounded views elaborated by Schacht. Furthermore, the narrative adds little by way of analysis. On the whole, the weaknesses of Melchert's work reveal the weaknesses of the present state of knowledge and understanding of the *madhāhib*.

At present, the most important orchestrated effort to expand beyond doctrine and dwell on the social and political aspects of the *madhāhib* is a volume that is the outcome of a conference, titled *The Islamic School of Law, Evolution, Devolution and Progress*.³² In this volume a number of articles touched upon a variety of issues that deal with the *madhāhib* as social entities: leadership, dissemination, internal debates, and intra-*madhhab* disagreements. These lines of inquiry contribute to a growing body of new studies that approach the *madhāhib* as social entities and a particular type of a religio-political movement.³³ These works, and hopefully future works, will enable us to examine the *madhāhib* from a new and different perspective—that of communities. This angle of investigation will enable us to learn how such communities were established, how their leaderships functioned, what generated internal tensions, strife and how they handled these moments of crisis.

One of the most interesting characteristics of the *madhāhib*, and one that illustrates that their social dynamics were of great consequence, was the fact that in the

³⁰ Christopher Melchert, *The formation of the Sunni Schools of Law: 9th-10th Centuries C.E.* (Brill, 1997).

³¹ Hallaq, W., "From Regional to Personal Schools of Law: A Reevaluation", *Islamic Law and Society*, 8.1 (2001): 3–5.

³² Peri Bearman, Rudolph Peters and Frank E. Vogel, eds., *The Islamic School of Law, Evolution, Devolution and Progress* (Harvard University Press, 2005).

³³ On leadership and the community see Daniella Talmon-Heller, "The Shaykh and the Community Popular Hanbalite Islam in 12th-13th Century Jabal Nablus and Jabal Qaysun", *Studia Islamica* 79 (1994): 1–3-120; For a study on leadership within the Hanbali *madhhab* see Nimrod Hurvitz, *The Formation of Hanbalism, Piety into Power* (Routledge Curzon, 2002); On the dissemination of the Hanafi *madhhab* see Nurit Tsafir, *The History of an Islamic School of Law, The Early Spread of Hanfism* (Harvard University Press, 2004).

course of the millennium after their establishment they did not dissolve or split into sub-groups. This cohesion, which characterizes the *madhāhib*, and in fact, the whole Sunni world ever since it split from the Shi`is and Khawarij, remains a fascinating feature that should be examined, particularly from its social and political angle. However, it is clear that at the present state of knowledge, when we know so little about the social mechanics of the *madhāhib* we cannot address such complicated issues. We need to acquire much more knowledge about the *madhāhib* and hone our analyses of their social and political characteristics.

4.4 Concluding Remarks

This essay argues that the tendency of modern scholars to concentrate on doctrine and marginalize the social and political dimensions of “ideological communities” reflects a long standing methodological approach that has led to a partial and lop-sided historical account of medieval Islam. The main distortion that results from the emphasis on doctrine is the inclination to identify the movements with ideas and not with people. Hence Shi`ism is viewed as a set of theological articles of faith and a *madhhab* is a body of legal opinions. As a consequence, the narratives of Islamic political history are being told without one of the two main players, the opposition movements. At the same time, the narratives dealing with Muslim movements leave out one of their central components, the “community”. Furthermore, one of the key and most fascinating topics of intellectual history, the interaction between ideas and socio-political dynamics is also lost once scholars discard politics and societies. As a result, up until today and probably in the foreseeable future, the history of Islam has been told with huge holes of information and inadequate tools for analyzing social and political processes and patterns.

Another significant distortion is the tendency of the few political narratives that do exist, to concentrate on imperial political elites and ignore the social strata below them. Such an approach dictates that we learn very little about the major critics, dissenters and rebels in Islamic history. It also means that we learn very little about one of the most significant components in ordinary believers’ identity—for affiliation with the Shi`is, or one of the *madhāhib*, or one of the Sufi brotherhoods, are important components in the identity of Muslim believers.

A close and systematic study of “ideological communities” will usher in a dramatically different understanding of Islamic history. It will enable historians to address a whole set of historical questions and dimensions that have been ignored. One example of such a new vantage point is “history from below”. “Ideological communities” have been established by individuals from the lower and middle strata of Islamic society—be they poor orphans, newly converted Muslims or leaders of small tribes. The vast majority of members of these movements were ordinary believers.

Their main motive was to reform society in line with moral or religious interpretations they embraced. In other words, these movements were a crucial channel by which the ordinary Muslim believer could express his thoughts and discomfort with the elites and establishments. In fact, it can be argued that the most important religious, social and political changes throughout most of Islamic history were initiated by individuals and groups who belonged to the lower or middle strata of society. Once scholars will take into consideration the impact of “ideological communities” on Islamic society and politics, that is, the influence that the lower social strata had on politics, they will be obliged to move away from our present tendency to write “history from above” and make much more room for “history from below”.

Guy Burak

5 According to His Exalted *Kânûn*: Contending Visions of the Muftiship in the Ottoman Province of Damascus (Sixteenth-Eighteenth Centuries)

5.1 I

Late in his career, after he had already served as the Hanafi mufti of Damascus,¹ the late eighteenth-century jurist and chronicler Muḥammad Khalil b. ‘Alī al-Murādī sat down to write *‘Arf al-bashām fīman waliya fatwā Dimashq al-Shām*, a biographical dictionary of the Hanafi muftis of Damascus from the Ottoman conquest of the city up to his own time.² In the introduction to this dictionary, al-Murādī explains why he decided to focus on those who held the muftiship of Damascus. In addition, he elaborates on the reasons for the chronological scope of the dictionary—the years of the Ottoman rule in Damascus. It is appropriate to cite this fascinating passage in full:

I wanted to compile a book that would include all the biographies of those who were appointed as muftis in it [in Damascus] from the time of the great sultan, the famous khaqān, the protector of the land and the frontiers, the grace of the eras and the times, the merciful and helper, he who makes flow the fountains of benevolence in this world and [the fountains] of justice, the queller of the people of evil and corruption, the bearer of the standards of the *sharī‘ah* and righteousness, the uprooter of oppressors, the defeater of tyrants, he who

1 For al-Murādī’s autobiography: Muḥammad Khalil ibn ‘Alī ibn Muḥammad ibn Muḥammad al-Murādī, *Arf al-bashām fīman waliya fatwā Dimashq al-Shām* (Damascus: Majma’ al-Lugha al-‘Arabiyya, 1979), 144–152.

2 For a general survey on the genre of biographical dictionaries see: Wadād al-Qāḍī, “Biographical Dictionaries as the Scholars’ Alternative History of the Muslim Community,” in *Organizing Knowledge: Encyclopaedic Activities in the Pre-Eighteenth Century Islamic World*, ed. Gerhard Endress (Leiden and Boston: Brill, 2006), 23–75; Michael Winter, “Historiography in Arabic during the Ottoman period,” in *The Cambridge History of Arabic Literature, Vol. 6: Arabic Literature in the Post-Classical Period*, eds. Roger Allen and D.S. Richards (Cambridge: Cambridge University Press, 2006), 179–184.

Although the biographical dictionary was a fairly common genre throughout the Mamluk and Ottoman period across the Arab lands, a biographical dictionary that was exclusively dedicated to muftis was quite rare. In the core lands of the empire, roughly a contemporary of al-Murādī, Müstaḳīmzāde Süleyman Sa’deddīn Efendī (d. 1787–1788) wrote a biographical dictionary entitled *Devḥatü’l-Meşâyih-i Kibâr* that is exclusively devoted to muftis: Müstaḳīmzāde Süleyman Sa’deddīn, *Devḥatü’l-Meşâyih: Einleitung und Edition* (Stuttgart: Steiner Verlag, 2005), 2 vols. See also Richard Repp, *The Mufti of Istanbul: A Study in the development of the Ottoman learned hierarchy* (London: Ithaca Press, 1986), 11.

holds the throne, he who is auspiciously assisted by God, the Iskandar of the time and its Anushrevān, the Mahdī of the time and its Sulimān, the Ottoman Sultan Salīm Khān, let him be enrobed with [God's] merciful contentment. This [the book starts] when he entered Damascus, renewed its affairs, implemented his edicts in it, and organized it according to his exalted *qānūn*, which is in accordance to the honorable *shar'*. [He also] arranged its [the city's] offices of knowledge and *siyāsa* according to his ability and his noble opinion. This was in 922 [AH/1516AD]. Among these [new regulations] was the assignment the position of the mufti (*takhṣīṣ al-iftā'*) of each school to a single person, and so he did with the judgeship. The kings and sultans before him, while they appointed a single person to the judgeship, left the affairs of issuing fatāwā to the 'ulamā': the 'ulamā' of each school issued their opinion when they were asked [on a certain issue], they answered [lit. wrote] questions, and there was constant dispute and strife among them [the jurists]. This was the state of affairs in Damascus until Sultan Salīm Khān entered the city, conquered it, and arranged its affairs. [Then] he eradicated from the people of stubbornness their rebelliousness, mastered the rulings [of the fitā', and conducted [it] according to the pure *shar'* its [the position of the mufti's?] regulations. His successors, the honorable Ottoman kings, employed this manner of assigning the muftiship of each school to a single person from the 'ulamā' of the school, and prevented all the other [jurists] from answering questions, and so was the case with the judges, up until our time in the rest of their land.³

In this introductory paragraph, al-Murādī points to the existence of two radically different perceptions of the relationship between the mufti and the ruler on the eve of the Ottoman conquest of the Arab lands. The pre-Ottoman, the “Mamluk,” model, explains al-Murādī, advances the independence of the mufti from state authorities, since the muftiship is an internal concern of the community of jurists and religious scholars. In the Ottoman understanding of the muftiship, by contrast, it is the sultan who appoints the juris consult. Although al-Murādī does not explicitly detail the implications of the different models, he seems to imply that the change was deeper than a change in the appointment procedure. The nature of the institution of the mufti and its role within the legal (and political) system were at stake.

In al-Murādī's eyes, the Ottoman conquest of the Arab lands led to an abrupt and intense encounter of these perceptions (or models). The aftermath of this encounter was decisive—the “Ottoman perception” of the muftiship trumped. Fittingly, the office of the mufti in general and specifically that of the Ḥanafī mufti of Damascus, which up to 1516 had followed the pre-Ottoman model, underwent considerable change, as it was modeled in congruence with the Ottoman perception of the office.

al-Murādī's description of the transformation of this office during the three centuries since the Ottoman conquest may be read on several different levels. First, in the passage al-Murādī unfolds his understanding of the history of the office he held for several years. Secondly, and perhaps more importantly for the purpose at hand, this passage may be read as al-Murādī's attempt to reconcile the tension between his knowledge of what he considered the pre-Ottoman understanding of the institu-

3 al-Murādī, *ʿArf al-bashām*, 2–3.

tion of the mufti and the current Ottoman practice. Thirdly, it is quite possible, as we shall see below, that al-Murādī was defending this change in response to allegations against the transformation the office of the mufti had undergone in the past three centuries, allegations that stemmed precisely from the tension between different understandings of the institution of the mufti.

Several decades before al-Murādī wrote the aforementioned introduction, another prominent Hanafi jurist, the Damascene ‘Abd al-Ghanī al-Nābulusī (d. 1731), had composed a treatise in which he responded to some statements made by al-Ḥaṣḥakafī, most likely, ‘Alā’ al-Dīn al-Ḥaṣḥakafī, the seventeenth-century state-appointed Hanafi mufti of Damascus, concerning the nature of the legal ruling and the muftiship. As will be discussed, al-Nābulusī’s understanding of the muftiship and of the relation between the sovereign and the muftis is different from al-Murādī’s and al-Ḥaṣḥakafī’s. By engaging al-Nābulusī on the one hand and al-Murādī and al-Ḥaṣḥakafī on the other in a dialogue, this chapter aims at reconstructing the debate among leading Damascene jurists over the course of the seventeenth and the eighteenth century concerning the nature of the office of the mufti and its relations with the Ottoman state authorities. Moreover, it seeks to explore the implication of this debate for understanding the nature of the institution of the mufti in the Ottoman Empire in general and in the province of Damascus in particular. Finally, I will try to show how the debate concerning the Ḥanafī muftiship of Damascus might open new directions for thinking about the relation between *ḳânûn* and *ṣerīʿat* in the Ottoman Empire.

5.2 II

None of the three “interlocutors”—al-Ḥaṣḥakafī, al-Nābulusī, and al-Murādī—in this debate was a contemporary of the other two. The lives of the three cover a span of almost two centuries. The debate in which they all took part, however, links some aspects of their biographies. My intention here is not to offer a comprehensive biography of these jurists. Rather, it is an elucidation of the debate. So instead of introducing the participants in this debate chronologically, the following survey attempts to explain the differing viewpoints between al-Ḥaṣḥakafī and al-Murādī on the one hand, and al-Nābulusī on the other.

Muḥammad b. ‘Alī b. ‘Alī b. ‘Abd al-Raḥman b. Muḥammad b. Jamāl al-Dīn b. Ḥasan b. Zayn al-‘Ābidīn, also known as ‘Alā’ al-Dīn al-Ḥaṣḥakafī (1616–1677), was born in Damascus. He started his training course in Damascus, but in the following decades he travelled to learning centers in Palestine and the Hijaz. Among his teachers was the prominent Palestinian jurist Khayr al-Dīn al-Ramlī, with whom he studied Hanafi jurisprudence. Later in his career, al-Ḥaṣḥakafī travelled to Istanbul, where he procured the appointment to his first teaching position. Then he left this office and

was appointed to the muftiship of Damascus, an office he held for five years.⁴ Like al-Ḥaṣḥafī, Muḥammad Khalīl b. ‘Alī al-Murādī was a native of Damascus. In addition, he was a member of the al-Murādī family, many of whom, including al-Murādī’s father, held the state-appointed Ḥanafī muftiship of the city over the course of the eighteenth century. During his stay in Istanbul in 1758, Muḥammad al-Murādī was also appointed to the Hanafi muftiship in Damascus.⁵

Although more will be said on the institution of the provincial muftis below, it is appropriate to say a few words at this point on the appointment of the Ḥanafī muftis in Damascus. Soon after the Ottoman conquest of Greater Syria, a graduate of the Ottoman education system who was also a member of the burgeoning religious-judicial establishment was sent from Istanbul to serve as the mufti of the city. Nevertheless, as al-Murādī’s biographical dictionary suggests, in the decades following the conquest, the Ḥanafī mufti that was sent from the imperial capital up until the late sixteenth century was not the sole Ḥanafī mufti in Damascus.

Two significant changes took place during the late sixteenth and the early seventeenth centuries. First, as Abdul Karim Rafeq has pointed out,⁶ from the end of the sixteenth century onwards the office was manned by prominent Damascene Ḥanafis. The reason for this shift from Rūmī (i.e., graduates of the Ottoman medrese system) Ḥanafis to Damascene ones is not fully clear. Nonetheless, the distinction between the Rūmī muftis of Damascus and the state-appointed Ḥanafī muftis of Damascene origin should not be overstated. As Martha Mundy and Richard Saumarez Smith have convincingly shown, the Damascene state-appointed muftis gradually adopted, followed, and defended the opinions of their colleagues in the core lands of the empire.⁷

The second change concerns the exclusivity of the appointed mufti. It seems that by the second half of the seventeenth century an imperial edict had been issued ordering only state-appointed Hanafi mufti the authority to issue legal rulings. Fittingly, the Ottoman state authorities, such as the chief judge in Damascus, prevented muftis who did not hold the appointment from issuing their legal rulings.⁸ Despite this edict, the

⁴ Muḥammad Amin b. Faḍl Allah al-Muḥibbī, *Khulāṣat al-athar fī-a’yān al-Qarn al-ḥādī ‘ashar* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2006), Vol. 4, 63–65.

⁵ al-Murādī, *‘Arf al-bashām*, 144–152; on the al-Murādī family of Damascus see, for example: John Voll, “Old ‘Ulama Families and Ottoman Influence in Eighteenth Century Damascus”, *American Journal of Arabic Studies*, III: 48–59.

⁶ Abdul Karim Rafeq, *The Province of Damasucs, 1723–1783* (Beirut: Khayats, 1966), 49. There were exceptions: The Bosnian-born Faḍl Allāh b. ‘Isā al-Būsnāwī (d. 1629), served as the mufti of Damascus in the early decades of the seventeenth century. Several decades later, Muḥammad b. Qubād, known as al-Sukūti (d. 1643), who entered the city with the chief qadi, Meḥmet b. Yūsuf (known as Nihali) in 1605, served as mufti. As his epithet suggests, his origin was from the town of Vidin. See: al-Muḥibbī, *Khulāṣat al-athar*, 4, 124–125; al-Murādī, *‘Arf al-bashām*, 72–73.

⁷ Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration, and Production in Ottoman Syria* (London and New York: I.B. Tauris, 2007), 11–39.

⁸ al-Muḥibbī, *Khulāṣat al-athar*, vol. 2, 310.

picture that emerges from seventeenth-century chronicles and biographical dictionaries is more complex. As the case of ‘Abd al-Ghanî al-Nābulusî indicates, the activity of certain muftis who did not hold a state appointment continued unmolested. It is thus possible that at certain times the Ottoman state authorities were more insistent on the exclusivity of the appointed muftis than in others. Alternatively, the eminence of these particular non-appointed muftis may account for their undisturbed activity.

Be the case as it may, ‘Abd al-Ghanî al-Nābulusî represents the second type of muftis that operated in Bilād al-Shā’m. Although al-Nābulusî had held an official appointment as a mufti for a short while before he was removed from this office,⁹ his prestige and authority as jurist rested mostly on his learning and scholarly achievements. Therefore, al-Nābulusî continued to be an important jurisprudential figure in Greater Syria whose opinion was sought. In this respect, his case resembles those of other Greater Syrian jurists, such as the Gazan Muḥammad b. ‘Abd Allāh al-Timurtāshî¹⁰ and the renowned Palestinian jurist Khayr al-Dīn al-Ramlî.¹¹ These prominent scholars, it should be stressed, never held a state-appointed office and their authority rested first and foremost on their scholarly prestige and their credentials.

This is not to say, however, that the three muftis were not loyal subjects of the empire. Al-Nābulusî, for example, compiled a poem in 1694 praising the Ottoman dynasty and the Ottoman sultan at the time, Ahmed II (1691–1695). And like al-Ramlî, he also granted permits to transmit his teachings (*ijāza*) to government officials, including the Grand Vezir ‘Alî Paşa (d. 1716). Al-Nābulusî had also some sympathizers among the Ottoman governors in Damascus. In 1716, the Ottoman governor in the city, for instance, asked him to compile an exegetical treatise.¹²

On the other hand, at times al-Nābulusî did not hesitate to criticize Ottoman officials. He subtly criticized, for example, the Grand Vezir Muṣṭafâ Köprülü for being too favorable to ward Serbian Christians. In another instance, al-Nābulusî disapproved of the imperial land tenure policy.¹³ And, as we shall see, al-Nābulusî took issues

⁹ Barbara Rosenow von Schlegell, *Sufism in the Ottoman Arab World: Shaykh ‘Abd al-Ghanî al-Nābulusî (d. 1143/1731)*, (Berkeley: unpublished Ph.D. dissertation, University of California, Berkeley), 110.

¹⁰ Anonymous, *Tarjmat Muḥammad al-Timurtāshî*, MS Es’ad Efendî 2212–1; al-Muḥibbî, *Khulāṣat al-athar*, vol. 3, 459–460.

¹¹ On Khayr al-Dīn al-Ramlî see: Judith E. Tucker, “The Exemplary Life of Khayr al-Dīn al-Ramlî,” in *Auto/Biography and the Construction of Identity and Community in the Middle East*, ed. Mary Ann Fay (New York: Palgrave, 2001), 9–17; Ibid., *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998), 31–32; Haim Gerber, “Rigidity Versus Openness in Late Classical Islamic Law: The Case of the Seventeenth-Century Palestinian Mufti Khayr al-Dīn al-Ramlî,” *Islamic Law and Society*, 5(2) (1998): 165–195; Haim Gerber, *Islamic Law and Culture, 1600–1840* (Leiden: Brill, 1999).

¹² Von Schlegell, *Sufism*, 96–101.

¹³ Mundy and Smith, *Governing Property*, 25–26.

with the Ottoman understanding of the institution of the mufti.¹⁴ But before we turn to al-Nābulusi's critique it is worth dwelling on the Ottoman understanding of the muftiship and on how it differed from the pre-Ottoman function of muftis during the late Mamluk sultanate.

5.3 III

When the early eighteenth-century Ottoman historian Na'imâ commemorated the appointment date (the year 1024AH/1615) of Meḥmet Efendî to the chief muftiship instead of his predecessor, Şun'ullah Efendî, he decided to do so by composing a chronogram: "Cling to the opinion of Meḥmet [Efendî] and according to this [opinion, you] should rule."¹⁵ This chronogram, it should be stressed, is not merely a rhetoric device or a decorative word-game. It captures Na'imâ's (and others') understanding of the nature of the office of the imperial chief mufti, the şeyhülislâm, and of the importance of the chief mufti's legal opinion.

From around the mid-fifteenth century, roughly around the conquest of Istanbul, the Ottoman ruling and religious elites gradually developed a hierarchy of judiciary positions and learning institutions (*medreses*). An integral aspect of this process was the emergence of the chief mufti, the şeyhülislâm, "to become, by the mid-sixteenth [century], the supreme office in the Ottoman judicial hierarchy."¹⁶ As part of the consolidation of this learned establishment, the office of the provincial mufti emerged as well.

In his *Telhîşü'l-Beyân fî Kevânîn-i Âl-i Osmân*, the seventeenth-century¹⁷ historian and encyclopedist Hezârfen Hüseyin Efendî dedicates a section to the taxonomy of muftis in the Ottoman Empire: "the mufti might be the şeyhülislâm, or he might not. Those who are not the şeyhülislâm are the provincial muftis (*kenâr müfîîeri*)."¹⁸ Hezârfen does not specify who the *kenâr müfîîeri* were, what their positions in the learned hierarchy were, why they were appointed, or in what manner. He merely explains that their rank is lower than the chief mufti's. Their lower rank is reflected in the require-

¹⁴ Mundy and Smith have noticed this treatise as well, see *ibid.*, 22.

¹⁵ Mustafa Na'imâ, *Târih-i Na'imâ: Ravzatü'l-Hüseyin fî Hulâsati Ahbârî'l-Hâfikayn* (Ankara: Türk Tarih Kurumu, 2007), vol. 2, 424.

¹⁶ Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997), 7. See also: Richard Repp, *The Müfti of Istanbul*.

¹⁷ Although written in the second half of the seventeenth century (completed in 1675–1676), Hezârfen relied on older documents, such as "*kânûnnâmes*, histories, old and new registers," as well as on other documents and registers from the court and the Imperial Divan. Hezârfen Hüseyin Efendî, *Telhîşü'l-Beyân fî Kevânîn-i Âl-i Osmân* (Ankara: Türk Tarih Kurumu Basımevi, 1998), 38.

¹⁸ Hezârfen Hüseyin Efendî, *Telhîşü'l-Beyân*, 197.

ment to mention the authoritative text (*nuḳûl*) they used for their ruling, whereas the chief mufti was not supposed to do so.¹⁹

The anonymous author of *Hırzû'l-Mülûk*, a treatise written several decades earlier and dedicated to the structure of the Ottoman state, provides additional details concerning the history of the office of the provincial mufti. According to this treatise, the main reason for the appointment of jurists as mufti in specific localities was to facilitate the access to a mufti without having to go to Istanbul. This may suggest that before this development took place, there had been only a single official mufti, who had resided in the Ottoman capital. Therefore, solicitors who wanted to obtain a jurisprudential ruling had had to travel to Istanbul for that purpose. The idea was to offer the provincial subjects authoritative rulings in the province. Later, in the author's time, the main purpose of the provincial mufti was to check oppressive officials and ignorant judges (*zaleme-i vulât ve cehele-i kudât*), who did not follow the rules of the *şer'at*.²⁰

Whatever the original intention was, from the second half of the fifteenth century muftis were appointed to major urban centers across the central lands of the empire. Following the Ottoman conquest of the Arab lands and their subsequent incorporation into the empire, this practice was introduced to these parts of the empire as well.²¹ Although the information about lesser urban centers is partial, at least from the seventeenth century, it seems that the state-appointed muftis operated in these towns as well.²²

The relationship between the chief imperial mufti, “the chief source of juristic authority,” and his provincial counterparts merits a few words. For understanding the nature of this relationship it is necessary to examine the doctrinal definition of the office of the şeyhülislam within the Ottoman religious-judicial establishment. The legal rulings (*fetâvâ*) issued by the chief muftis over the course of the sixteenth and the seventeenth century serve as an important venue in which his authority was established. As time wore on, chief muftis increasingly underscored the binding nature of their legal opinions. Thus, all the members of the Ottoman religious-judicial establishment, muftis and judges alike, were to follow the chief mufti's rulings.

Consider, for instance, the following fetvâ. The seventeenth-century şeyhülislâm Yahyâ Efendî (d. 1643) was asked about a provincial mufti who permitted the remarriage of a couple after the wife had been triple-divorced but had not been married to another husband in between (*hilla*). This permission was against the ruling of the

¹⁹ Ibid., 200. See also: Uriel Heyd, “Some Aspects of the Ottoman Fetva”, *Bulletin of the School of Oriental and African Studies*, 32 (1, 1969): 45–46.

²⁰ Anonymous, *Hırzu'l-Mülûk* in Yaşar Yücel, *Osmanlı Devlet Teşkilâtına dair Kaynaklar* (Ankara: Türk Tarih Kurumu, 1988), 192.

²¹ Repp, *Müfti*, 62–68.

²² Khayr al-Dîn al-Ramlî, for instance, obtained a state appointment for his nephew to serve as the state-appointed mufti of the Palestinian city of Ramla. al-Muḥibbî, *Khulāṣat al-athar*, Vol. 3, 396–397.

chief mufti.²³ Accordingly, the chief mufti ruled that the provincial mufti should be punished (*ta'zīr*) and banned from issuing legal rulings (*iftā'dan men' lâzimdir*). The same chief mufti also ordered the removal of a judge from office who ruled against the chief mufti's, perhaps his own, ruling.²⁴

The removal of a mufti from office is of particular relevance to our discussion, for this is perhaps the most radical difference between the Ottoman perception of this institution and the understanding of the muftiship in other Islamic societies. More specifically, the Ottoman perception of the muftiship, as al-Murādi's introductory comment suggests, was substantially different from the perceptions of the office that prevailed in Mamluk sultanate prior to the Ottoman conquest. It is beyond the scope of this essay to explore the institution of the mufti under the Mamluks. Suffice is to say that at least in the fourteenth and the fifteenth century every scholar who was granted a permit to teach law and issue legal opinions (*ijāzah fī al-tadrīs wa-l-iftā'*) by his teacher (or teachers) could have, at least theoretically, issued a legal ruling.²⁵ At the same time, with the exception of the muftiship of the Hall of Justice (*Dār al-'Adl*),²⁶ the mufti was not an office, as was the case under the Ottomans, but rather a status.

Moreover, despite the plurality of muftis, it should be emphasized that their rulings were not binding, as opposed to the judge's resolution in court. Nevertheless, Mamluk judges and rulers found at times the plurality of muftis disturbing and some of them even tried to limit it.²⁷ But it is important to note that the argument

²³ Yahyâ Efendî, *Fetâvâ*, MS Ayasofya 1569, 88a.

²⁴ Ibid., 84b. Similar ruling is recorded Abdü'r-Raḥîm Efendî's *fetâvâ* collection. Haim Gerber, *State, society, and law in Islam: Ottoman law in comparative perspective* (Albany: State University of New York Press, 1994), 81 (and 201, f.n. 3).

²⁵ For an excellent discussion of this institution see: Devin Stewart, "The Doctorate of Islamic Law in Mamluk Egypt and Syria," in *Law and Education in Medieval Islam: Studies in Memory of Professor George Makdisi*, eds. Joseph E. Lowry, Devin J. Stewart and Shawkat M. Toorawa (Cambridge: The E J W Gibb Memorial Trust, 2004), 45–90.

²⁶ On *Dār al-'Adl* and its muftiship see: Emile Tyan, *Histoire de L'organisation Judiciaire en Pays D'Islam* (Leiden: Brill, 1960), 433–525; Jørgen S. Nielsen, *Secular Justice in an Islamic State: Mazālim under the Bahri Mamlūks 662/1264–789/1387* (Leiden: Nederlands Historisch-Archaeologisch Instituut te Istanbul, 1985), 49–173; Nasser O. Rabbat, "The Ideological Significance of the Dar al-'Adl in the Medieval Islamic Orient," *IJMES*, 27 (1), 3–28; Jon E. Mandaville, *The Muslim Judiciary of Damascus in the late Mamluk Period* (Princeton: Unpublished Ph.D. dissertation, 1969), 5–11, 69–73. In the fourteenth century there were official muftis affiliated with the four legal schools present in every session of the Hall in Cairo. In Damascus, on the other hand, in the late Mamluk period only the Hanafi and Shafi'i schools were represented. Jon Mandaville has suggested that in late fifteenth-century Damascus, only a Hanafi mufti attended the sessions of Dar al-'Adl in the city. Nevertheless, al-Ghazzî mentions a Shafi'i mufti as well. Najm al-Dīn al-Ghazzî, *al-Kawākib al-sā'ira bi-a'yān al-mi'a al-'āshira* (Beirut: al-Maṭba'ah al-Amrikiyya, 1945), vol. 1, 40–45.

²⁷ Lutz Wiedehold, "Legal-Religious Elite, Temporal Authority, and the Caliphate in Mamluk Society: Conclusions Drawn from the Examination of a "Zahiri Revolt" In Damascus in 1386," *International Journal of Middle East Studies*, 31 (2), 199: 320; Morimoto Kosei, "What Ibn Khaldūn Saw: The

Nujaym's *al-Baḥr al-rā'iq*³² and Ibn al-Humām's *Faṭḥ al-qadīr*,³³ al-Nābulusī claims that a mufti should be a *mujtahid*,³⁴ that is, a jurist who is allowed to exert his own juristic effort (*ijtihād*) for reaching a rule or an opinion.³⁵ But the problem, according to al-Nābulusī, is that at his time there is not any jurist who may be considered *mujtahid*, as the eponymous founder of the Ḥanafī school Abū Ḥanīfa was. Instead, there are only jurists who preserve and transmit the opinions of previous *mujtahids*. Thus the muftis of his time, al-Nābulusī concludes, are not truly muftis but the transmitters of the sayings of the Mufti for the solicitor. The opinion can be transmitted either through a chain of transmission or through well-known and reliable texts, such as al-Marghīnānī's *al-Hidāyah* or al-Sarkhasī's *al-Mabsūṭ*. If there are multiple opinions, issued by different *mujtahids*, the follower (*muqallid*) is free to choose any of these opinions.³⁶

Returning to the sultan's appointment of muftis, al-Nābulusī admits that Ibn Nujaym states that the imām should examine who is eligible to issue legal rulings from amongst the jurists and should prevent incompetent jurists from obtaining this position. But, al-Nābulusī qualifies, Ibn Nujaym's statement should not be understood as a justification for appointing a single mufti whenever there are several eligible jurists. Therefore, al-Nābulusī concludes, every person who fulfils the requirements in terms of knowledge could issue legal rulings.³⁷

As far as al-Nābulusī and his non-appointed colleagues were concerned, the plurality of muftis was crucial, as it legitimated their activity. Therefore, the argument al-Nābulusī advances is not simply a theoretical discussion, but a defense of a scholarly practice that permitted his own and others' activity as muftis. Read from this perspective, his treatise echoes the concerns of non-appointed jurists who were possibly threatened by the Ottoman appointment policy. More generally, al-Nābulusī's treatise brings to the surface a different understanding of jurisprudential authority and its transmission. By doing so, he poses a serious challenge to the institution of the state-appointed mufti in particular, and to the soundness of the Ottoman appointment policy of muftis in general.

Given al-Nābulusī's immense popularity, al-Murādī must have been familiar with at least some of the arguments raised in al-Nābulusī's treatise, and perhaps even with the treatise itself. Specifically, he must have been aware of the tension

32 al-Nābulusī, *al-Radd*, 103b–104a. al-Ḥaṣḥafī, in his commentary on *Multaqā al-abḥur*, shares this observation. al-Ḥaṣḥafī, *al-Durr al-muntaqā*, vol. 3, 215.

33 al-Nābulusī, *al-Radd*, 154b.

34 Ibid.

35 On *mujtahid* and *ijtihād*: Wael B. Hallq, *The Origin and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 128–132; Ibid., *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), 1–24.

36 al-Nābulusī, *al-Radd*, 154b.

37 Ibid., 154b–155a.

between the concept of the muftiship as it appears in late Mamluk sources (as well as in later sources from the Arab lands) and the Ottoman practice of appointing muftis. al-Murādī's introduction, then, might be read as a response to these arguments. Thus, al-Murādī employs several arguments that are not the arguments made in the late Mamluk jurisprudential texts, such as the need to prevent disputes among the jurists. al-Murādī is also aware of the novelty in the Ottoman understanding of the muftiship. For these reasons, al-Murādī is compelled to admit that the practice of appointing muftis is rooted in the Ottoman *ḳânûn* which in turn is "compatible with the *sharī'ah*."

In this way, the imaginary dialogue between al-Nābulusī and al-Murādī is of relevance for understanding the relationship between "*ḳânûn*" and "*sharī'a*". This is the main focus of the next and concluding section.

5.5 V

[...] when he entered Damascus, he renewed its affairs, implemented his edicts in it, and organized it according to his exalted *qânûn* which is in accordance to the honorable *shar'*. [He also] arranged its [the city's] offices of knowledge and *siyāсах* according to his ability and his noble opinion.

The definition of *ḳânûn* and *sharī'a* (or *ṣerī'at*) in the Ottoman context and the relationship between these concepts have drawn considerable scholarly attention over the past decades.³⁸ One of the approaches to these questions perceives *ḳânûn* and *ṣerī'at* first and foremost as two supplementary, often "kneaded together," components of the Ottoman legal discourse. Other scholars, however, have approached this question from a somewhat different angle. While not disregarding its discursive dimension, these scholars have pointed to the fact that *ḳânûn* also denotes various administrative and institutional practices prevalent across the empire. These practices, it should be stressed, were not necessarily codified, but were generally referred to as *ḳânûn*. Furthermore, although the institutional practices were not always codi-

38 Several studies have dealt with different aspect of these issues. Here are some relevant examples: Halil Inalcik, s.v. "Kânûn," *EP*²; Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973); Colin Imber, *Ebu's-Su'ud*; F. Babinger, s.v. "Nishandji," *EP*²; Molly Greene, *A Shared World: Christians and Muslims in the Early Modern Mediterranean* (Princeton: Princeton University Press, 2000), 27–32; Timothy J. Fitzgerald, *Ottoman Methods of Conquest: Legal Imperialism and the City of Aleppo, 1470–1570* (Harvard University: Unpublished Ph.D. dissertation, 2009), 188–195; Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500–1900* (Berkeley: University of California Press, 2006), 50.

fied and were constantly negotiated and reconfigured,³⁹ the *ḵânûn* as legal discourse served to legitimize these practices. The task, then, is to define what *ḵânûn* means in a specific historical context and the implication of this definition for understanding the relation between *ḵânûn* and *şerʿat*.

The development of the Ottoman religious-judicial establishment is a good example of these dynamics. As Richard Repp has demonstrated, the consolidation of the Ottoman religious-judicial establishment was a direct outcome of a series of imperial edicts and legal codes (*ḵânûnnâmes*).⁴⁰ The emergence of the şeyhülislam's office and those of his subordinates was also part of this process. To be sure, the fact that the hierarchy was established through these edicts does not necessarily preclude the participation of jurists in this process. Moreover, one should be careful not to assume that the jurists' involvement was instrumental. Instead, it is possible that the jurists in the core lands of the empire genuinely tried to articulate a religious-political vision that would be compatible with their understanding of the *şerʿat*. Yet, this does not alter the fact, as al-Murâdî observes in the introduction, that it was the imperial edicts that legitimized these institutional developments and specifically the emergence of a particular understanding of the muftiship (and especially of the chief muftiship) within the Ottoman establishment.

The latter point is of particular relevance to the aforementioned debate, since the Ottoman understanding of the muftiship assumed that the content of the *şerʿat* was determined by the chief mufti. The latter, in turn, was a product of specific Ottoman administrative and institutional practices, the *ḵânûn*. From an institutional perspective, then, *ḵânûn* and *şerʿat* were not exactly equal in the Ottoman context, for the content of *şerʿat*, that is a particular version of the Ḥanafî school, was defined by an officeholder, the chief mufti, whose authority to endorse an opinion (and to exclude others) rested on the *ḵânûn*. As al-Murâdî argues, however, many members of the Ottoman religious-judicial establishment claimed in what seems to be a cyclical argument that this practice was compatible with the *şerʿat*.

To conclude, the encounter of two different perceptions of the muftiship in the Ottoman province of Damascus may serve as a laboratory to examine the relationship between different perceptions of *şerʿat* (or *sharīʿa*). The debate outlined above makes clear that both parties understood what was at stake was not merely a procedural issue. Beyond the procedural or institutional aspects, the debate was about defining which Hanafî opinions should be applied as well as about the range of acceptable opinions within the Ḥanafî school. While the Ottoman religious establishment

³⁹ Başak Tuğ, *Politics of Honor: The Institutional and Social Frontiers of "Illicit" Sex in Mid-Eighteenth-Century Ottoman Anatolia* (New York University: Unpublished Ph.d. Dissertation, 2009), 40–96; Cornell H. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Âlî (1541–1600)* (Princeton: Princeton University Press, 1986), 191–200.

⁴⁰ Repp, *Müfti of Istanbul*.

sought to limit the range of applicable views within the schools, muftis who were not appointed by the state, such as al-Nābulusī, envisioned a wider range. From the latter's perspective, this was intended to defend the legitimacy of other Ḥanafī scholarly traditions, not necessarily those endorsed by the Ottoman religious-judicial establishment, within the Ottoman imperial framework.

Avi Rubin

6 The Slave, the Governor, and the Judge: An Ottoman Socio-Legal Drama from the Late Nineteenth Century

6.1 Introduction

Judge Ali Eşref Efendi, the respected president of the court of first instance in the Ottoman town of Ayvalık, may or may not have been surprised when the gendarmes came to arrest him on Wednesday, November 4, 1885. Forced to spend the next four months in prison, waiting for his trial to commence, he had plenty of time to ask himself over and over again whether his sacrifice on behalf of the female slave Bezmi-hal was justified. To be sure, his intentions were humane by every moral standard. A year earlier, a female slave (*cariye*) named Bezmihal had approached a judge's wife with a plea for immediate help. Her situation was rather complicated, since she had been in the service of the local governor of the county, Emin Bey, for the previous twelve years. Bezmihal told the judge's wife that her master, the governor, after formally manumitting her, had changed his mind and decided to sell her. She also complained about the brutality with which she had been treated. Why did Bezemihal appeal to the wife rather than the judge? The details that unfolded during the trial strongly suggest that her decision to approach the judge through his wife was a calculated move, one in a series of moves intended to fulfill the universal desire of slaves for freedom.

Judge Eşref Efendi was accused of violating a major procedure by having the court issue a ruling that was supposed to secure Bezmihal's freedom and prevent her sale. From the perspective of the public prosecutor, the problem was not the fact that the Ayvalık court of first instance had intervened on behalf of the slave, which, in itself, was in line with the overall slow-but-steady process of abolition which took place in the late nineteenth century. The problem was entirely legal. The court president was accused of issuing a court decision on his own initiative without following the standard procedure, which required a court hearing.

The verbatim report of the trial of Ali Eşref Efendi was published in the *Ceride-i Mehakim* (Journal of the Courts), published by the Ottoman Ministry of Justice for the judicial community of the empire. The trial tells the interrelated stories of a female slave who desired freedom, her master, a local governor who was ambivalent about her manumission, and a judge who risked his career on her behalf. At the same time, the trial reflects two major transformations that were part of the passage of Ottoman society to modernity: the abolition of slavery and judicial reform. The trial of Ali Eşref Efendi provides an opportunity to discuss some key features of Ottoman

legal changes and how they were experienced by ordinary people who were forced to deal with the dilemmas brought about by new laws, major reforms, and a new legal culture.

A comment should be made about the approach employed in this article. Overall, microhistorical methods are seldom applied in historical writing about the modern Middle East, leaving questions of individual agency and everyday practices relatively neglected.¹ Microhistory emerged in the 1970s as an alternative to the generalizations made by social scientists, which, according to microhistorians, failed to capture “the concrete reality of the small-scale life they wished to explain.”² This approach has since evolved into a diverse genre of historical writing offering a wide range of methodologies and objectives, defying any attempt to subject microhistory to one definition.³ Nevertheless, it seems that recovering human agency through scale reduction is the single most salient feature of all microhistories. Texts analyzed microhistorically are not meant to “represent” the greater whole in the way that case studies serve social scientists. Rather, the scale reduction and the narrative strategies employed allow us to *imagine* the episode in question and the world in which it was set. Equally significant, it enables us to imagine the dilemmas and choices faced by ordinary people in the wake of major transformations.

My discussion begins with a general review of the judicial reforms, followed by a discussion of the events leading up to the trial and the choices made by the individuals involved in the events that led to the trial, and in the proceedings themselves. This allows me to demonstrate something of the dynamics of modern Ottoman courts.

1 Notable exceptions are the following microhistorical studies, all of which focus on socio-legal themes: Ehud R. Toledano, *As if Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven, 2007); Ehud R. Toledano, “Slave Dealers, Pregnancy, Abortion, and the World of Women: The Story of a Circassian Slave Girl in mid-Nineteenth Century Cairo,” *Slavery and Abolition* 2 (1981): 53–86; Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, 2006); Leslie P. Peirce, “Le dilemme de Fatma: Crime sexuel et culture juridique dans une cour ottomane au début de temps modernes,” *Annales: Histoire, Sciences, Sociales* 53 (1998): 291–320; Leslie P. Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley and Los Angeles, 2003).

2 George G. Iggers, *Historiography in the Twentieth Century: From Scientific Objectivity to the Pre-modern Challenge* (Hanover NH, 1997), 108.

3 The large volume of methodological discussions on microhistory is indicative. See, for instance Giovanni Levi, “On Microhistory,” in *New Perspectives on Historical Writing*, ed. Peter Burke (Cambridge UK: Polity Press, 1991), 93–113; Thomas Kuehn, “Reading Microhistory: The Example of Giovanni and Lusanna,” *The Journal of Modern History* 61 (1989): 512–534; Brad S. Gregory, “Is Small Beautiful? Microhistory and the History of Everyday Life,” *History and Theory* 38 (1999): 100–110; Carlo Ginzburg, John Tedeschi, and Ann C. Tedeschi, “Microhistory: Two or Three Things that I Know about It,” *Critical Inquiry* 20 (1993): 10–35; John Brewer, “Microhistory and the Histories of Everyday Life,” *Cultural and Social History* 7 (2010): 87–109; Sigurdur Gylfi Magnusson, “The Singularization of History: Social History and Microhistory within the Postmodern State of Knowledge,” *Journal of Social History* 36 (2003), 701–735.

Specifically, in the last part of my discussion, I interpret the trial as an illustration of the new legal culture that emerged in the 1870s, which emphasized formalism and accountability.

6.2 New Courts

Until the second half of the nineteenth century, Ottoman law, which was a combination of *Şer'i* law and sultan edicts legislated at the imperial center, had been applied through the *Şeriat* courts. During the second half of the nineteenth century the Ottoman judicial system was comprehensively restructured as part of the administrative reorganization of state institutions, known as the *Tanzimat* (reorganization). A new court system evolved during the 1850s and the 1860s through a heuristic process which began with the establishment of judicial forums for solving disputes between Ottoman and foreign subjects, particularly in the field of commerce, and matured with the foundation of the *Nizamiye* courts in 1864, and the judicial reforms of 1879. Legal borrowing from French law, codification in the civil, criminal and commercial fields, and standardization in the working of the courts were at the core of this major legal change.⁴

The reforms of 1879 brought the judicio-administrative evolution of the *Nizamiye* court system to its conclusion by introducing civil and criminal procedural codes and establishing a formal division of labor between the *Nizamiye* and the *Şeriat* courts. The jurisdiction of the *Şeriat* courts was reduced to matters of personal status, whereas the *Nizamiye* courts became the main judicial forum for addressing civil and commercial cases, and the exclusive forum in the criminal domain.⁵

Scholars of the modern Middle East have interpreted the Ottoman adoption of French laws and concepts as a sign of partial secularization and westernization, often describing the *Nizamiye* courts as “secular courts”. Elsewhere I criticize the accustomed tendency to frame the otherwise multi-faceted process of socio-legal change in

⁴ On the emergence of the *Nizamiye* courts and their institutional structure, see Sedat Bingöl, *Tanzimat Devrinde Osmanlı'da Yargı Reformu: Nizamiye Mahkemelerinin Kuruluşu ve İşleyisi 1840–1876* (Eskişehir: Anadolu Üniversitesi, 2004); Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri* (İstanbul: Arı Sanat, 2004); Fatmagül Demirel, *Adliye Nezareti: Kuruluşu ve Faaliyetleri, 1876–1914* (İstanbul: Boğaziçi, 2007). On the socio-legal history of the *Nizamiye* courts, see Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New-York: Palgrave Macmillan, 2011).

⁵ The state allowed a certain space for legal pluralism in specific civil matters, thus permitting litigants to choose between the *Nizamiye* and the *Şeriat* courts. See Rubin, *Ottoman Nizamiye Courts*; Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse: Syracuse University Press, 2006).

terms of the ever-present duo of westernization/secularization.⁶ In my understanding of the *Nizamiye* courts, the descriptive categories of westernization and secularization possess little value for understanding the working of these new courts and their role in the overall passage of Ottoman law to modernity. Indeed, akin to other projects of legal change in the history of the world, the Ottoman case of judicial reform was embedded in legal borrowing; and like all other cases of legal borrowing, the resulting judicial system was an amalgam of local and borrowed laws and practices, rather than a replication of the model legal system. The *Nizamiye* court system manifested such hybridity in the laws it applied and in its structure. The expansive *corpus juris* employed by the courts for the purpose of adjudication included codified *Şer'i* law, such as the *Mecelle* (the civil code), alongside codified adaptations of French law, such as the Code of Civil Procedure. Of special relevance to the episode discussed in this paper is the Ottoman version of the courts of first instance, which was an adaptation of the French equivalent.

Unlike the *Şeriat* court, which was administered by a single judge (*kadı*, hence widely referred to as “kadi courts”), each *Nizamiye* court consisted of a few members (*aza*) and a president (*reis*). The number of members reflected the level of the court in the judicial hierarchy. Thus, the court of first instance consisted of two members and a president; the provincial courts of appeal were divided into civil and criminal sections, each of which consisted of four members and a president; each section in the Court of Cassation in the imperial capital, which was the highest judicial level, consisted of six members and a president. The courts of first instance were the backbone of the system and manifested an intriguing feature: most of the judges presiding in these courts were the local *Şer'i* judges (*naibs*). In other words, the presidents of the *Nizamiye* courts of first instance were the same individuals who served in the local *Şeriat* court. When serving in the *Şeriat* court, the *naib* worked in accordance with *Şer'i* procedure; when presiding the *Nizamiye* courts, he was expected to apply the positive law that was distinctive of the *Nizamiye* courts.⁷ This composition of the courts of first instance changed in the years following the Young Turks Revolution (1908), when the positions of presidents were filled by judges of non-*Şer'i* educational background.⁸ Hence, there was nothing unusual in the fact that Ali Eşref Efendi, who presided over the *Nizamiye* court of first instance in Ayvalık, was a *naib* by training.

⁶ Avi Rubin, “Ottoman Judicial Change in the Age of Modernity: A Reappraisal,” *History Compass* 7 (2009): 119–40.

⁷ In a few courts, however, the president of the court of first instance was not a *naib*. See, for instance, *Diyarbakır Salnameleri, 1286–1323*, ed. Ahmet Zeki İzgöer, vol. 3 (Diyarbakır: Diyarbakır Büyükşehir Belediyesi, 1999), 305; *Konya Vilayet-i Salnamesi* (Konya: Konya Vilayet Matbaası, 1315).

⁸ Demirel, *Adliye Nezareti'nin Kuruluşu ve Faaliyetleri*, 89–90.

6.3 The Trial of Ali Eşref Efendi

The verbatim report of the trial appeared in the *Ceride-i Mehakim* (Journal of the Courts, est. 1873), an official publication issued by the Ministry of Justice. This weekly publication was an important tool, designed to promote some of the key objectives of the reforms, notably standardization of judicial practice and effective communication between the various judicial units. The journal helped hundreds of judges, clerks, prosecutors, notaries and attorneys to find their way through the *Nizamiye* procedural maze. The voluminous issues of the *Ceride* contain thousands of reports on cases originating from courts of first instance and courts of appeal across the empire. Most of the case reports appear as concise minutes, but in a few cases the editors chose to publish complete verbatim reports of court hearings, as was the case with the trial of Ali Eşref Efendi, due to the trial's exemplary value.

6.3.1 The Charges

Ayvalık is an ancient seaside town on the northwestern Aegean coast of Anatolia. In the late nineteenth century it belonged to the province of Hüdavendiğar. Ali Eşref was tried in the criminal section of the court of first instance in Karesi (today's Balıkesir), which was the provincial capital of Hüdavendiğar. The first hearing only took place four months after his detention, because Ali Eşref Efendi had, for unknown reasons, submitted a petition to the Court of Cassation, asking for his case to be transferred to another court, a petition which had been denied. The trial commenced on March 22.

The Karesi staff consisted of four court members and a president, a recording clerk, and an assistant public prosecutor. As described in the report, facing them was the accused judge, Ali Eşref Efendi, alongside his Greek attorney, Toma Andonyadi Efendi (who was later replaced by another attorney). The hearing was public, as was the case with most *Nizamiye* trials. The courtroom contained sixty spectators, seated to the left of the table that stood between the accused and the court panel. More spectators were seated behind the accused and his attorney. The court president, Ali Rıza Efendi, administered the trial in accordance with the *Nizamiye* procedure. He started by asking the accused to state his name, age, occupation, address and place of birth. Ali Eşref Efendi indicated Istanbul as his place of birth and permanent residence. Once the procedure of identification was completed, the president instructed the prosecutor to present his case.

As a rule, in accord with the impersonal discursive style of the Continental legal tradition, recorded statements by public prosecutors in court were neutral, their tone devoid of condemnation. However, the public prosecutor, Ali Haydar Bey, deviated from this style, when making the following introduction:

Obviously, the foundation and publication of laws are intended to secure public and private rights. Courts are established and judges are appointed to carry out the rule of justice... However, Ali Eşref Efendi, the previous president of the Ayvalık court of first instance, chose to act contrary to the law, which is a violation of one of the most important judicial qualities, if not the most important one.⁹

In all criminal cases, the onus was on provincial public prosecutors and their assistants to represent the “public rights” in court on the basis of an investigation conducted by the investigating magistrate (*müstantık*); in cases of accusations against judicial officials, however, the decision whether or not to press charges was contingent on an investigation conducted by an ad hoc committee (*heyet-i mahsusa*). The prosecutor summarized the bill of indictment, which included the following three charges: first, on July 1884, Ali Eşref issued a *Nizamiye* court decision concerning the freedom of Bezmihal, the female slave of the county governor (*kaimakam*) of Ayvalık, Emin Bey. This decision was conceived illegally, as it had not been preceded by a court hearing. Secondly, in his capacity as court president, Ali Eşref was accused of violating the orders of the Ministry of Justice by allowing the assistant examining magistrate of his court to travel to İzmir, and also allowing his court notary to travel to Istanbul. The public prosecutor argued that the court president had no authority to authorize these trips without the ministry’s formal permission. Thirdly, Ali Eşref was accused of destroying a report submitted to him by the examining magistrate of his court. The first charge, defined by the prosecutor as *cinayet*—a transgression of the severest legal category—was the main issue in this trial, whereas the other charges were considered minor. The judge, Ali Rıza, ordered the accused, Ali Eşref, to explain the issuance of the court decision concerning the freedom of the female slave, Bezmihal, to which Ali Eşref replied:

One day, Bezmihal, the female slave of Emin Bey, came to my wife and told her: “Although I have been in Emin Bey’s service for twelve years, he wants to sell me now. Please manumit me.” Several days later, the governor and his female slave came over [to my house]. During the discussion, the governor Bey told [Bezmihal]: “I manumitted you.” Since she said that she was not sure that a *Şer’i* ruling was sufficient for [legal] manumission, I ordered [the court member] İkonomidi Efendi to write an official order (*tenbihname*).¹⁰

At this point, the court president ordered the clerk to read aloud the court decision in question, the summary of which is included in the protocol:

Following the petition of the female slave, the governor had been informed about the imperial orders concerning the prohibition on selling slaves, yet he admitted that he had intended sell her [nonetheless], being his female slave. Since he was reluctant to manumit her (*itaktan istinkaf eylemesine mebni*), the court decided to prevent the sale and confirm her personal freedom (*hür-*

⁹ *Ceride-i Mehakim* (henceforth, CM), 3,504.

¹⁰ CM, 3,505.

riyet şahsiyesi), in accordance with clauses 9 and 10 in the Essential Law (*Kanun-ı Esasî*). The decision was dated 17 Temmuz 1300 [July 29, 1884].¹¹

In other words, at some earlier point, the governor had manumitted Bezmihal in the presence of the *Şer'i* judge, who was one of Ali Eşref's predecessors, yet Bezmihal did not leave her master's house. The governor later changed his mind about her manumission, and decided to sell Bezmihal for unknown reasons. For Bezmihal, this act meant a perpetuation of her previous slave status, and a denial of her new status as a free woman.

6.3.2 Slavery and Abolition

Bezmihal's motivation in reaching out to the *Nizamiye* court, and judge Ali Eşref's response to her plea, make sense when contextualized by briefly describing the changes that occurred in Ottoman slavery during the second half of the nineteenth century. Slavery was a fundamental institution in Ottoman society since the foundation of the Ottoman state. Historians distinguish between the category of military-administrative servitude, known as the *kul* system, which was the linchpin of Ottoman military-administrative elite until the nineteenth century, and the category of domestic-agricultural slavery. In fact, the elevated social status of the former group has led some historians to question the validity of the term "slavery" for describing the *kul* system.¹²

From the early 1840s, the Ottoman government was forced to accommodate increasing British abolitionist pressure. Attempting to resist British demands for suppression of slave trade in their domains, the Ottomans tried to persuade British statesmen and consuls that Ottoman slavery bore no resemblance to Western forms of slavery, by drawing their attention to the elite status of the *kul* category and playing down the significance of domestic-agricultural slavery.¹³ In the long run, however, the combination of unwavering British pressure, steady percolation of abolitionist ideas into Ottoman elite circles and intelligentsia, and the emerging Ottoman version of official nationalism, changed attitudes towards slavery in the nineteenth centu-

¹¹ Ibid.

¹² Gibb and Bowen, *Islamic Society and the West*, volume 1, 43–5. For the same reason, in her recent textbook on the Ottoman Empire, Suraiya Faroqhi avoids the term *slaves* when describing Janissaries, using instead a somewhat ambiguous formulation as to their actual legal status: "Janissaries and other office-holders of the sultan were so dependent on him that their condition bore a resemblance to slavery. In this regard, the levy of boys was in line with the Medieval Near Eastern tradition of using slaves or former slaves of the ruler for military functions." Suraiya Faroqhi, *The Ottoman Empire: A Short History*, trans. Shelley Frisch (Princeton: Markus Wiener, 2009), 48.

¹³ Ehud R. Toledano, *Slavery and Abolition in the Ottoman Middle East* (Seattle: University of Washington Press, 1998), 15.

ry.¹⁴ On a practical level, this change took the form of edicts prohibiting slave trade, embedded in Anglo-Ottoman conventions; at the same time, it meant a more profound, indeed a historic transformation of the relationship between the state and the slaves, one whose reverberation is clearly apparent in Bezmihal's plea and the response of Judge Ali Eşref.

In his definitive social history of slavery in the late Ottoman Empire, Ehud Toledano analyzes the changing patterns in the relationship between what he terms the "patron state" of the *Tanzimat* and the large population of domestic-agricultural slaves. Conceptualizing the slaver-enslaved relationship as a "bond of reciprocity between unequal participants". Toledano demonstrates how the state gradually backed down from its traditional support of slave owners, assuming the role of a patron of the slaves. Through interventions such as legislation and court decisions, the state claimed a new protective role with regard to slaves: "when approached by absconding enslaved persons, the *tanzimat*-state offered protection and benevolence—that is, manumission and responsible placement."¹⁵ In the second half of the century, it became a common practice for courts and officials to issue manumission documents, and related procedures were legislated concurrently.¹⁶ Slaves were quick to recognize the new official attitude to enslavement and the opportunity it entailed for improving their situation. They also identified the potential benefit of official documents in their dealings with officials and slave owners. In cases of manumission, the official document was their ticket to freedom. Hence, they "... remained keen on obtaining official papers of manumission, trying as best as they could to hang on to them or—if the papers were taken and torn—to reclaim their freedom on the basis of the destroyed papers."¹⁷

The willingness of the reformers to regulate and even reduce the volume of the slave trade, and the slaves' attempts to attain freedom on the basis of this official approach, were often crushed by the reality of slave owners' indifference to manumission documents. As noted by Toledano, slave owners often considered these documents as a mere formality in cases of forced liberation by the state.¹⁸ This corresponds to Bezmihal's situation. She managed to attain a formal manumission docu-

¹⁴ Dror Ze'evi, "Kul and Getting Cooler: The Dissolution of Elite Collective Identity and the Formation of Official Nationalism in the Ottoman Empire," *Mediterranean Historical Review*, 11(1996): 177–95.

¹⁵ Ehud R. Toledano, *As if Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven: Yale University Press, 2007), 111.

¹⁶ According to Erdem, "automatic manumission" was more widespread in Istanbul, the Balkan provinces and Western Anatolia, than in the Arabic speaking provinces. Y. Hakan Erdem, *Slavery in the Ottoman Empire and its Demise, 1800–1909* (New York: Macmillan; St. Martin's Press, 1996), 154–60.

¹⁷ Toledano, *As if Silent and Absent*, 116.

¹⁸ Ibid.

ment from the *Şeriat* court, yet her owner changed his mind about her manumission, disregarding the formal document in her possession. She reacted by absconding and trying to obtain another document of manumission.

6.3.3 Bezmihal

Was Bezmihal one of those absconding slaves who hoped to benefit from the new official attitude to slavery? The deposition taken from Judge Ali Eşref before the trial (read aloud at the trial), his statements in court, and the testimony of thirty-five year old court member İkonomidi Efendi, provide a consistent picture of the course of events. After several years of servitude, the governor Emin Bey manumitted his female slave, Bezmihal, in the presence of the *naib*; but she did not leave his household.

Who was Bezmihal, the daughter of Abdah? Her identity can be only inferred from the report. In the nineteenth century, *cariye* was a general term for female slave; in itself, it did not provide any clues about social standing.¹⁹ A *cariye* could be a member of the imperial elite, an upper-level *harem* slave in the household of a provincial high-ranking official, or a domestic servant of lower status. Emin Bey's handling of the issue suggests that Bezmihal belonged to the category of *harem* slaves, namely, women who were taught the social and domestic roles associated with the position of an "Ottoman lady," and eventually became the legal wives or concubines of members of the military-administrative elite.²⁰ We may assume that Bezmihal was light-skinned, probably either Circassian or Georgian, given the common preference of elite households for light-skinned female-slaves.²¹

6.3.4 A Compassionate Judge

At some point, Bezmihal fled to the house of Ali Eşref Efendi, the local *naib* and president of the *Nizamiye* court in Ayvalık. She made the initial contact not with the judge, but with his wife, who apparently advised her to approach her husband. The report makes it clear that she spent some time in the house of the judge and his wife after running away from her master. One can only speculate why she chose to turn to the judge's wife first. Given the fact that she had already gone through the legal process of manumission, it was unlikely that she did so out of ignorance regarding her right to approach the judge directly. Perhaps the judge's wife was acquainted with Bezmihal; perhaps the judge's wife was known for her empathy. Whatever the reason, it is

¹⁹ Toledano, *Slavery and Abolition*, 167.

²⁰ Ibid, 30.

²¹ Toledano, *As if Silent and Absent*, 12.

clear that Bezmihal's decision to first approach the wife of judge Ali Eşref was a calculated move. Following his wife's suggestion, Bezmihal approached the judge. She told him that Emin Bey, her master, had changed his mind about her manumission and decided to sell her, and that he had been treating her with brutality.

Judge Ali Eşref Efendi did not find anything odd in her complaint. Sexual and other harassment of *harem* slaves was a common misfortune.²² Judge Ali Eşref stated in his deposition that the slave Bezmihal turned to the *Nizamiye* court with a plea to "rescue her from oppression," complaining that her master had been treating her with brutality, and that he intended to sell her. The judge responded to Bezmihal's request by providing her with a manumission document that was supposed to prevent her sale on the basis of the *Essential Law* of 1876, which prohibited violation of personal liberty.²³ The benevolent intentions of Ali Eşref Efendi towards the woman in distress were evident in the testimony of court member İkonomidi Efendi, who recalled Ali Eşref's words to him following Bezmihal's plea:

One day, Eşref Efendi came from his home and entered the courtroom in a state of agitation. He pulled out a piece of paper from his pocket and told me: "write what I am telling you." I picked up a pen. He ordered: "a one-paragraph *Nizamiye* ruling (*ilam*) has to be written concerning the freedom of Bezmihal, the female slave of Emin Bey. Put the decision in the register, and have it signed with the seals of the court members." I warned Ali Eşref Efendi that this [action] would contradict the norm (*hilaf-i vaki*); that the [other] members would disagree, and that this was a big responsibility. He replied: "I cannot punish the governor [for his violent treatment of Bezmihal]. I just want to protect his slave from slavery (*ancak cariyeyi esaretten kurtarmak istiyorum*). This slave escaped from the governor's house and took refuge with my wife. I am not sending her back to the governor's house. Governor Emin Bey has beaten her."²⁴

It appears from this testimony that what most troubled Ali Eşref was the violence with which the governor treated his female slave. In fact, Ali Eşref Efendi was so moved by Bezmihal's story and so eager to save her from the alleged maltreatment of her master, that he was willing to violate procedure and issue a court ruling without first conducting a hearing. The court member warned him from the potential consequences but Ali Eşref chose to ignore them. The report does not disclose the reasons for Ali Eşref's reluctance to keep his court members in the picture. Given that, unlike presidents, court members were not professional lawyers, but rather elected representatives of the local elite appointed by special committees, one can imagine Ali Eşref's concern. Members of the local administrative councils and the courts of first instance were active participants in local politics. The provincial reforms of the 1860s were intended, *inter alia*, to centralize political power by co-opting provincial power holders into the

²² Toledano, *Slavery and Abolition*, 30.

²³ CM, 3,509.

²⁴ CM, 3,507.

state apparatus.²⁵ As far as the local notables were concerned, membership in local administration became a means of preserving political power.²⁶ Perhaps Ali Eşref Efendi, who, not being a native, was unaffected by local political games, assumed that the governor would thwart his attempt to help Bezmihal the moment he heard about it, by exerting his influence on the members of the court. Be that as it may, he seems to have felt sufficiently confident to confront the powerful official by this act. At that point, judging by the governor's reaction, the exchange between the judge and the governor did not appear to be a full confrontation. According to the testimony of Abd'almu'min Bey, a tax official who was an associate of governor Emin Bey, the governor told him that his slave had escaped to the judge's house, asking Abd'almu'min and another official to accompany him to the judge and help him persuade her to return. Abd'almu'min told the court what happened at the meeting at the house of the judge to render the governor's efforts worthwhile:

The governor tried to convince her, saying: "you are one of my children," but she refused. He told her that he will not beat her again. [Eventually] the judge sent [the slave] to the governor's house, accompanied by a Christian woman called Katarina.²⁷

6.3.5 Governor Emin Bey

There is no way to know what was actually said at that meeting, and why the judge eventually decided to send Bezmihal back to Emin Bey against her will. Did Emin Bey threaten him in any way? Was the judge convinced by Emin Bey's pledge to never again beat Bezmihal? What was the nature of the relationship between Bezmihal and the governor? Surely, he did not take her leaving lightly. Her situation was tenuous and unclear, as were the circumstances of many other manumitted slaves, both male and female. It is clear that legally Bezmihal was a free woman after her master manumitted her in the presence of a *Şer'i* judge. Yet in actual fact, neither governor Emin Bey nor Bezmihal understood the formal manumission in the presence of the *Şer'i* judge to be "the last word" on their bond. She is referred to as "Emin Bey's female slave (*cariye*)" throughout the protocol of the trial. Toledano's conceptualization of owner-slave relations as a "bond of reciprocity between unequal participants," dictated by the logics of patronage, is essential to understand Bezmihal's behavior. The formal

²⁵ Carter V. Findley, "The Evolution of the System of Provincial Administration as Viewed from the Center," in *Palestine in the Late Ottoman Period: Political, Social, and Economic Transformation*, ed. David Kushner (Jerusalem: Yad Yizhak Ben-Zvi; Leiden: E.J. Brill, 1986), 4–29.

²⁶ See, for instance, M. Safa Saracoğlu, "Letter from Vidin: A Study of Ottoman Governmentality and Politics of Local Administration, 1864–1877" (Ph.D. Dissertation, Ohio State University, 2007).

²⁷ CM, 3,509–10.

act of manumission cannot be interpreted merely in terms of shifting from one legal situation (enslaved) to another (freeman or freewoman), at any rate not by default. The question of Bezmihal's legal status was but one aspect, albeit an important one, of a complicated relationship between two individuals. This was also implied by the fact that she did not leave Emin Bey's house as soon as he had manumitted her.

Bezmihal approached the judge in order to put an end to the violent conduct of Emin Bey. Perhaps she hoped that he would help her find a better placement. Perhaps she had no intentions of leaving the governor's house in the first place. Yet, appealing to the judge (first to his wife) made perfect sense. After all, who else could she turn to? For her, Judge Ali Eşref Efendi represented the *patron state*, and he responded positively by providing her with legal assurance of her freedom.²⁸ Nevertheless, he found out the hard way that the same state took its commitments to legal formalism no less seriously than its obligations to the enslaved.

Governor Emin Bey was not willing to tolerate the active role played by Judge Ali Eşref Efendi. According to the testimony of court member İkonimidi Efendi, once the governor learned about Ali Eşref's violation of procedure when issuing the court decision, he turned to the public prosecutor in the provincial center, determined to initiate the judicial process that would result in Ali Eşref Efendi's arrest.²⁹

6.3.6 Court Investigation

The court that tried Ali Eşref was not interested in the question of Bezmihal's freedom, but with the legality of Ali Eşref's conduct. The president, Ali Rıza Efendi, and the members of his court had to decide whether or not Ali Eşref Efendi had issued an unlawful court decision. The information available to the court panel that tried Ali Eşref consisted of the various documents at hand (reports of the examining magistrate and prosecutor, depositions, minutes of the hearings), and the testimonies heard in court.

İkonomidi Efendi, a member in Judge Ali Eşref's court, was a key witness, since he was the only one who had been personally involved in the issuance of that court ruling. İkonomidi told the court that Ali Eşref dictated to him a *Nizami* court decision concerning the freedom of Bezmihal. Judge Ali Eşref dismissed this testimony as untrue. He said in the hearing that he had not dictated anything to İkonomidi, and that he merely asked him to have the *Şeriat* court write a proclamation that would reaffirm Bezmihal's freedom in order to prevent her sale, and inform the governor

²⁸ Though the "patron-state" was a feature of the nineteenth century, Ottoman slaves always had the right to seek the protection of the courts and request manumission in cases of ill-treatment. Erdem, *Slavery in the Ottoman Empire*, 33.

²⁹ CM, 3,508.

accordingly. Trying to get to the bottom of this matter, the court president asked Ali Eşref: “Does İkonomidi Efendi hold a grudge against you?” and Ali Eşref replied: “I do not know whether or not he holds a grudge against me.” Following this exchange, the prosecutor Ali Haydar Bey asked the judge to have the clerk read aloud the written deposition of Ali Eşref, and the judge complied.

As might be expected, the written defense that Ali Eşref had submitted to the court prior to the hearing was more structured than his more spontaneous oral statements in response to the queries of the president in the hearing, and it was certainly more legalistic in style:

First, there had been no court decision that was allegedly forged, and the alleged charge of forgery had not been founded; secondly, the responsibility (*memuriyet*) of setting up the court decision is demonstrated in the *Criminal Code*. In these circumstances, in order to inflict the [relevant] legal penalties on the perpetrator (*fa'il*), and especially in the case of forgery, the forger of the documents must be an official. Court decisions issued by the courts of first instance are kept in the courts. The preparation of reports, as well as all the duties related to the scribal actions, is not supposed to be referred to the court presidents. All of these responsibilities are exclusively among the duties of the head clerk (*başkatib*) and the recording clerk (*zabıt katibi*). Hence, attributing the responsibility stemming from the act of the head clerk - defined here as a witness - to someone else, is inconceivable. [In addition], this matter is considered to belong to the *Şeriat* court. Since a *Şeriat* court decision had been already issued, the interested party (*zat-ı maslahat*) does not need a *Nizamiye* court decision, unless he has a malicious intention, and he wishes to achieve a certain goal. It is apparent that the document mentioned above was not forged. The damaged person and the [actual] damage should be proven. All the details of the clauses regarding forgery are presented in clause 56 in the *Code of Civil Procedure*, and in the fourth chapter of the *Code of Criminal Procedure*. As to the abovementioned document, even if the private plaintiff was able to demonstrate to the court a forgery, he was unable to prove a malicious intention.³⁰

To sum up, Ali Eşref made two arguments. Whereas the prosecution claimed that he had forged a *Nizamiye* decision, he tried to present the document that had been issued to Bezmihal as a *Şer'i* document, whose issuance was an administrative matter that was part of the scribal duties and not one of own responsibilities as a judge. If there was a procedural fault, it was a matter of error, and did not arise from malicious intent, which otherwise had to be proven. Obviously Ali Eşref was familiar with the formalist culture of the *Nizamiye* courts, and he played this card when stating his awareness that it was illegal for a judicial forum to decide on a matter that had already been decided in another judicial forum. It was only natural that he would employ his legal knowledge when arguing that actual damage had to be substantiated, and a damaged party had to be established, in order to prove his culpability.

Yet, Ali Eşref was a *naib* and a president of the civil *Nizamiye* court, not the criminal one. In fact, he seemed to be ill-informed on criminal law. Raising the issue of

30 CM, 3,511-2.

“damaged party” made sense in *Nizamiye* civil cases, not in criminal ones, where the business of prosecution was exclusively in the hands of the state. Indeed, prosecutor Ali Haydar Bey exposed the legal ignorance of the accused judge, and his attempt to manipulate the court, when telling the court that the charges against Ali Eşref were “matters of public rights, and therefore there is no need to seek an injured party or a private plaintiff”.³¹ The prosecutor did not spare any efforts to depict Ali Eşref’s terminology and the statement concerning his commitment to the division of labor between the *Şeriat* and *Nizamiye* courts as an empty quibble. He was condemning the attempt of the defendant to present the document that had been provided to Bezmi-hal as a “written order” (*tenbihname*), rather than a court ruling (*ilam*): Using the word ‘written order’ (*tenbihname*) to describe this measure is a forced explanation after the fact. “Altogether, the case against Ali Eşref Efendi and the present trial is a *Nizamiye* matter; it is not related to the *Şeriat* court (*niyabet-i Şeri’iye*).”³² The other charges against Ali Eşref Efendi related to administrative irregularities in his court. Rather than denying these irregularities, he presented them as unfortunate mishaps.

6.3.7 Decision

As required by procedure, before concluding the hearing the president of the court asked Ali Eşref for the last time if he had anything else to say in his defense. The accused judge replied: “I have made my defense. I have nothing else to say”.³³ The president pronounced the conclusion of the hearing, and retired with his colleagues to the conference room, where they deliberated the case and drafted the decision.

The court was not convinced by Ali Eşref’s explanations. In its decision, it pointed to the series of procedural violations of which he was accused. In addition to the charges that sparked the proceedings against Ali Eşref Efendi, the court stated in its decision that Ali Eşref had ignored the formal division of labor between the *Nizamiye* and the *Şeriat* court when he issued a *Nizamiye* document of manumission, a matter under the jurisdiction of the *Şeriat* court.³⁴

The court found Ali Eşref Efendi guilty on all charges, and sentenced him to six months imprisonment, beginning with his arrest on November 4, 1885, in addition to a fine of five *liras*.³⁵ Since Ali Eşref Efendi had already spent the preceding six months in prison, awaiting his trial, the sentence handed down on June 2, 1886 actually brought this stressful period to a close. Comparing this sentence to penalties pre-

³¹ CM, 3,512.

³² CM, 3,523.

³³ CM, 3,524.

³⁴ CM, 3,525.

³⁵ CM, 3,525–6.

scribed by the relevant clause in the *Criminal Code*, the clause indicated in the court decision, it appears that the court was quite lenient. Clause 127 prescribed a penalty of one to three years imprisonment for misusing or tampering with state documents. Hence, the court imposed a lighter penalty than the minimum prescribed for this charge. Moderate as it may have been, the fact remained: this decision marked the banishment of Ali Eşref Efendi from the judiciary.

6.4 Legal Formalism and Accountability

Obviously, every trial has multiple layers of meaning, only fragments of which are revealed in the documentary traces left by court proceedings. Much of the hidden or overt agendas, behind-the-scene intrigues, and the passions that motivate human behavior, will always be left out of the judicial records. As far as microhistorical analysis is concerned, this truism is not an impediment; rather, it is a given. The judges who looked into the case of Ali Eşref Efendi were not interested in reconstructing the *histoire totale* of Ali Eşref's court and conduct; they were concerned with the specific connections that were relevant to their duty. Namely, they had to assess how his actions conformed with the letter of the law. In (a somewhat) similar manner, a microhistorical reading of the trial's verbatim report is not intended merely as an interesting story that happened in the past. Rather, it is aimed at understanding specific connections between the episode in question, marginal as it might be, and the larger scheme of things. Unlike the judge, however, the microhistorian has no interest in solving contradictions.³⁶

The details of judicial practice exposed through the trial of Ali Eşref Efendi, as well as the decision to publish the full verbatim report in the *Ceride-i Mehakim*, convey two crucial elements of the ideology distinctive of the *Nizamiye* courts: legal formalism and the principle of accountability.

Obsession with procedure was one feature of the *Nizamiye* court system that qualified it as a *modern* legal system, distinguishing it from the preceding *Şeriat* court system, in which legal procedure was much simpler. In the late nineteenth century, Ottoman justice became increasingly associated with adherence to codified procedure. All judicial actions were regulated by hundreds of clauses inscribed in the procedural codes, to be applied uniformly by all courts. The difference between *lawful* and *unlawful* became contingent on strict application of the codified procedure. The legal legitimacy of every judicial practice was primarily assessed in terms of how it

³⁶ For a comparison between the judge and the historian, see Carlo Ginzburg, *The Judge and the Historian: Marginal Notes on A Late-Twentieth-Century Miscarriage of Justice* (London, New York: Verso, 1999).

conformed to a particular standard published by the Ministry of Justice or the legislature. The judiciary's observance of procedural standards was constantly monitored through the courts of appeal and the Court of Cassation. Annulment of court decisions due to often quite minor procedural failures was a widespread phenomenon. As in any other modern judicial system that endorses legal formalism, the elaborate procedure and the zeal with which it was enforced by the Ottoman central judicial administration provided those appealing to the court (hereafter, court users) with new means for contesting their adversaries.³⁷ The ideology of legal formalism was indoctrinated among the judicial rank-and-file through daily circulars; through the publication of rulings issued by the Court of Cassation; and by treating significant violations of procedure as a breach of discipline. The intolerance of the central judicial administration to procedural compromises was entrenched in the principle of accountability, yet another attribute of the *Nizamiye* court system.

In the late nineteenth century, trivial violations of procedure and general negligence by judicial personnel were included in the category of official misconduct, along with more obviously unjust conduct, such as acceptance of bribes and brutal behavior towards court users and even colleagues. Court presidents and members were subject to criminal investigations, prosecution, and trials for violations of procedure. For example, the entire staff of the Hakkari court of first instance was prosecuted for forming a court committee (*heyet-i hakime*) not in accordance with procedure, and unlawfully releasing a suspect.³⁸ An investigating magistrate in Amasya and the assistant public prosecutor of the same court were tried for delaying criminal cases.³⁹ The president of the criminal section of the court of first instance in Sivas was prosecuted for holding up a single case for forty days.⁴⁰

Ali Eşref Efendi's transgression was hardly minor. From a *Nizamiye* perspective, the severe deviation from procedure evidenced by his conduct undermined the very principle of the rule of law. The court was not impressed by his kindness, revealed not only in his treatment of Bezmihal, but also in his treatment of his subordinates. The other, less serious, charges against him should be also recalled. Ali Eşref was accused of permitting two of his subordinates to travel away for a week, although the authority to issue such permits lay with the Ministry of Justice, and not with the president of the court. In the court hearing, his attorney explained it as a matter of misunderstanding, emphasizing that they had traveled for the purpose of their weddings.⁴¹ It is difficult to ignore the pattern in Ali Eşref's behavior: in all these cases he acceded to the

37 Avi Rubin, "Legal Borrowing and its Impact on Ottoman Legal Culture in the Late Nineteenth Century," *Continuity and Change* 22 (2007), 279–303.

38 CM, 11,006.

39 CM, 2,866.

40 CM, 11,294.

41 CM, 3,525.

insistent pleas of individuals who needed his help, while taking the formalities rather lightly. Nevertheless, it appears that good intentions played no part in the formalist legal culture of the *Nizamiye* court system; the judges made it clear in their decision, arguing that his explanation was irrelevant.

6.5 Conclusion

The consequences of Bezmihal's appeal to the patron-state embodied in the *Nizamiye* court are unknown. To be sure, the price Ali Eşref was forced to pay for his compassion was considered appalling for any man of his position, since he forfeited his career and his good name. Bezmihal was returned to her master, perhaps to a miserable destiny of further beatings, as Judge Ali Eşref was no longer available to protect her. Perhaps the governor learned his lesson and improved his treatment of Bezmihal. Her determined behavior made it clear that she was not a passive victim to the whims of her master. Emin Bey's success in getting rid of Ali Eşref Efendi did not alter the fact that the patron-state was increasingly attentive to the needs of slaves, and willing to confront slave owners.

The "system" penalized Ali Eşref Efendi for compromising procedure, although no ill intentions were evident. It may be tempting to depict the harsh response of the system as yet another indication of the heartlessness of the modern, panoptic state, with its set-in-stone procedures, but this would miss the *bona fide* intentions of the reformers and the central judicial administration to cultivate a legal system that would curb arbitrariness. The motivation of Governor Emin Bey in initiating disciplinary measures against the judge was certainly different, yet there was nothing cynical in the words of the prosecutor Ali Haydar Bey: "Courts are founded and judges are appointed in order to carry out the rule of justice". Prosecutor Haydar Bey was merely representing the *Nizamiye* conviction, indeed the conviction of other modern legal systems, which equated justice with legal formalism. Humane gestures were less relevant in that cosmology.

Omri Paz

7 The Policeman and State Policy: Police Accountability, Civilian Entitlements, and Ottoman Modernism, 1840–1860s

7.1 Introduction

For centuries rural Ottoman communities were organized on the basis of unwritten understandings of give and take with the state and with non-state forces. The weight of these competing forces varied over time. From the beginning of the reform era known as the *Tanzimat*, the Ottoman state tried to introduce a new type of “social pact” into rural Ottoman life and generally succeeded in doing so. As an extension of the elite, the state redefined social borders to promote the elite’s interests and agendas. Within this new pact, or social arrangement, the Ottoman state made great efforts to inject itself into the countryside as a viable force.

As part of the new social pact, two new concepts were introduced by the Ottoman state in the middle decades of the nineteenth century: the “nanny state,” referring to a policy whereby the state is excessively concerned with protecting, governing, and regulating social policies, and “direct access,” a term implying that each member of society has equal access to the center of power. By the late 1830s the Ottoman state, or as Ehud Toledano refers to it—the *Tanzimat* state—had begun to regard itself as a nanny state. It also laid the foundations for a new social order based on direct access.

Nanny state concepts and direct access policies first found expression in the legal arena, especially in criminal law and adjudication. The process of redefining the Ottoman state as a nanny state governed by direct access can be observed on the ground through the establishment of the Ottoman police in the mid-nineteenth century.

Ottoman Police units, named *Asakir-i Zaptiye*, were created in 1840 and deployed in several provinces to enable provincial governors to inject the state into all aspect of provincial life. Historians therefore suggest that this institution had very little, if any, crime-fighting capability.¹ Indeed, when studied as an organization aimed at extend-

¹ Nadir Özbek, “Policing the Countryside: Gendarmes of the Late 19th-Century Ottoman Empire (1876–1908),” *IJMES* 40 (2008): 47; Ferdan Ergut, *State and Social Control: The Police in the Late Ottoman Empire and the Early Republican Turkey, 1839–1939* (Unpublished Ph.D. dissertation, New School for Social Research, 2000), 98–99. A version of this dissertation was published in Turkish, see: Ferdan Ergut, *Modern Devlet ve Polis: Osmanlı’dan Cumhuriyet’e Toplumsal Denetimin Diyalektiği* (İstanbul: İletişim yayınları, 2004). For non-Turkish readers reference has been made to the English version.

ing the hold of the central government over the provinces, the crime-fighting and law enforcement aspect of the newly created police force is often overlooked.

Between the 1840s and the 1860s the triangular relationship of state, police, and subject was redefined by the central government. This was done by establishing the accountability of policemen and the entitlement of subjects, an indication that the *Tanzimat* state was turning into a nanny state, governed by principles of direct access, a process which stands at the crux of this chapter. Needless to say, police accountability is intertwined with subject entitlement. Furthermore, these developments point to an internally driven non-Western modernity, which is the main theme of this book.

After a brief historical survey of the Ottoman police and further elaboration of the terms “nanny state” and “direct access” we shall see how in practice state-police-subject interactions were defined, through criminal court records, and how they are linked to the two terms. The following review of the police will stress the fact that, despite being primarily a paramilitary force, the *Asakir-i Zaptiye* were assigned civil police duties, especially crime-detecting tasks, since police accountability was defined within the sphere of crime-detection.

7.1.1 The Ottoman Police

By the turn of the nineteenth century there was clearly a growing need for a more centralized police force in the Ottoman provinces, and in 1802, local military companies (*Nizam-ı Cedid Ortaları*) were deployed in some provinces.² Yet it was Sultan Mahmut II (1808–1839) who strove to establish domestic security, as part of his efforts

² During the eighteenth century, imperial governments took over the direct governing of their large metropolises (London, Paris, and Vienna). See, Mark Neocleous, “Theoretical Foundations of the ‘New Police Science,’” in *The New Police Science: The Political Power in Domestic and International Governance*, eds. Markus D. Dubber and Mariana Valverde (Stanford: Stanford University Press, 2006), 23, 34; Markus D. Dubber and Mariana Valverde, “Perspectives On the Power and Science of Police,” in *The New Police Science: The Political Power in Domestic and International Governance*, eds. Markus D. Dubber and Mariana Valverde (Stanford: Stanford University Press, 2006), 1–2. For eighteenth century contemporary writing see, for example, Adam Smith, *Lectures on Jurisprudence* (Oxford: Oxford University Press, [1763] 1978); Jeremy Bentham, *A Fragment on Government* (Oxford: Oxford University Press, [1776] 1951). Istanbul was no different, as shown by Fariba Zarinebaf. The imperial government employed new methods of running Istanbul, which included among other things new types of criminal justice and policing. See, Fariba Zarinebaf, *Crime and Punishment in Istanbul, 1700–1800* (Berkeley, University of California Press, 2010). Throughout the book Zarinebaf employs the term “police” without really defining what it actually meant. One may think we are talking of men in blue uniforms, able of both crime preventing and detecting. While Zarinebaf herself acknowledges that a modern Ottoman police force was set up in the 1840s (p. 177), she does not define the unique characteristics of eighteenth century policing. In practice policing was, at that stage, still in military hands.

to deploy a regular army statewide. By 1826, he had succeeded in abolishing the Janissary Corps. This was considered an important step toward centralized policing, since most urban policing tasks had been in the hands of the Janissaries. By the mid-1830s reserve army units (*Asakir-i Redif Taburları*) had been created, which also served in the provinces.

In early 1840 a decision was made to set up provincial paramilitary police units, known as *Asakir-i Zaptiye*, literally “Military Police.” However, they should not be confused with modern *Military Police* whose duties are to impose order and discipline on men and women in military service. The first *Asakir-i Zaptiye* units were paramilitary in nature, based on the French *Gendarmerie* model.³ They were composed of cavalry and infantrymen, hence the name. Officers were recruited from the army, while ordinary policemen came from either the army, or were recruited from among fief (*Timar*) holders. However, the underlying objective in the deployment of these police units was not crime fighting⁴, which only evolved at a later stage, but rather the expansion of the central government’s control over the provinces. Between 1840 and 1846, police units were not under a central command but subordinate to a local governor.⁵ Deployment of units was gradual, first in provinces closer to the capital, and only later in others.⁶

Charged with patrolling rural districts, *gendarmeries* or paramilitary police forces were usually cavalrymen recruited from the army, uniformed and equipped like soldiers, but often better paid, and therefore regarded as an elite corps. For organization, finances, equipment, and discipline, they usually reported to the Ministry of War, not to the Ministries of Interior or Justice, or to representatives of the local civilian government.⁷ At the same time, they serviced the civil authorities, who usually worked under the aegis of the Ministry of Interior.⁸ With their military bearing, uniforms, and weaponry, *gendarmes* embodied the twin threats of state violence and state power. They played an important role in enforcing new forms of discipline, and expanded the bureaucratic surveillance capacity of the state.⁹

As early as the mid-1840s there was a genuine need for civil policing. In 1845, the demand for a civilian police force (i.e., a force aimed at serving and protecting the public and engaged mostly in crime-fighting as we know it today) was first raised.

3 On the history of *Gendarmeries* in Europe, see: Clive Emsley, *Gendarmes and the State in Nineteenth-Century Europe* (Oxford: Oxford University Press, 1999).

4 Ergut, *State and Social Control*, 120.

5 Özbek, *Policing the Countryside*, 51–52.

6 Ali Sönmez, *Zaptiye Teşkilatı'nın kuruluşu ve Gelişimi* (Unpublished Ph.D. dissertation, Ankara Üniversitesi, 2005), 27–28.

7 Clive Emsley, “Peasants, gendarmes and state formation,” in *National Histories and European History*, ed. Mary Fulbrook (San Francisco: Boulders, 1993), 69–70.

8 Emsley, *Gendarmes and the State*, 3.

9 Emsley, *Gendarmes and the State*, 7.

And indeed, for a short time, an all-civilian police organization (*Polis Teşkilatı*) was introduced in Istanbul. This was the first time that the term “police” was used in Ottoman-Turkish.¹⁰ The military disapproved of the creation of a non-military force, so the task of civil policing fell to it.¹¹ The military thus assumed responsibility for civilian policing and crime-fighting.

When a year later, in 1846, the Directorate of Police and *Gendarmerie* (*Zaptiye Müşiriyeti*) was formed, all civilian and paramilitary police forces came under a single command. This period, from 1846 to 1879, is referred to as the time of “unification of the security forces” (*tevhid-i zabıta*).¹² However, the *Asakir-i Zaptiye* basically remained a paramilitary force, with the emphasis on its tasks as *Gendarmerie*, because the Directorate was an all-military body.¹³ During those years, the Directorate was theoretically responsible for hiring, training, and disciplining the troops, while the command of the units and the police stations was in the hands of local governors.¹⁴ In practice, however, this was not always the case.

Short-term employment, the lack of training in civilian policing, and the fact the vast majority of the force was made up of cavalry and infantrymen, are but a few indicators of the Directorate’s paramilitary inclinations. The provincial governors used the police to strengthen their hold on the provinces and thus advance the centralization process.¹⁵ However, since the governors were preoccupied with increasing the state’s revenues, the police force became a tax-collecting agency for the central government, a task which overshadowed and obstructed its original mandate to maintain law and order.¹⁶

External forces compelled the *Asakir-i Zaptiye* to engage in crime-fighting and crime detection. The first of these was the criminal court system, headed by the Supreme Council of Judicial Ordinance (*Meclis-i Vâlâ-yı Ahkâm-ı Adliye*, hereafter the Supreme Court).¹⁷ The establishment of police stations (*karakols* and sometimes

10 Osman Nuri Ergin, *Mecelle-i Umur-i Belediyye*, cilt 2 (Istanbul: İstanbulBüyükşehir Belediyesi yayını, 1995): 875–878.

11 Ergut, *State and Social Control*, 99–100.

12 Ibid.

13 Ergut, *State and Social Control*, 99–100; Özbek, *Policing the Countryside*, 52. It should be noted that this held true only in the provinces. In Istanbul the police also assumed responsibility for the criminal courts, and therefore they were far more engaged in crime-fighting.

14 Özbek, *Policing the Countryside*, 51–52.

15 Ibid.

16 Özbek, *Policing the Countryside*, 53.

17 The Supreme Council of Judicial Ordinance was first and foremost an advisory council to the sultan on matters involving the drafting of regulatory laws and the regulation of the administration. Serving as the supreme criminal court was secondary, see: On the Supreme Council and its working proceedings, see: Stanford J. Shaw, “The Central Legislative Councils in the Nineteenth Century Ottoman Reform Movement Before 1876,” *IJMES* 1 (1970): 51–84; Ehud R. Toledano, “The Legislative Process in the Ottoman Empire in the Early Tanzimat Period: A Footnote,” *International Journal of*

karakolhanes) in the provinces during the mid-1850s, nearly twenty years after their introduction in the capital,¹⁸ had a similar effect. From a paramilitary force, segregated in barracks, the police became accessible to the community who, in return, drew it toward civilian policing—the second external force. One might argue that the police were induced to fight crime in the provinces by both “top-down” and “bottom-up” currents.

In 1867, in response to the growing need for a crime-fighting authority, a second attempt was made to create an urban civilian police force called, *Teftiş Memurları*, this time in the provinces.¹⁹ The attempt failed, however, and urban policing remained in the hands of the *Asakir-i Zaptiye* until 1879.²⁰

Between the 1840s and the 1870s the *Asakir-i Zaptiye* underwent a process of standardization similar to that of other Ottoman bureaucratic systems in the mid-nineteenth century. During the 1860s this process was formalized by a series of regulations: the Provincial Law (1864), the *Asakir-i Zaptiye* Law (1869), and the publication of the *Asakir-i Zaptiye* Statute (*Asakir-i Zaptiye Nizamnamesi*) in 1870.²¹

By the 1870s the Directorate of Police and *Gendarmerie* were putting the emphasis on professionalism. Orders were given for units to improve the force by providing the men with instruction. The underlying principle behind these regulations was that being a policeman was a profession (*meslek*). From then on, men who wanted to enter the police service had to produce a guarantor (*kefil*) (thus implying that not just anyone could become a policeman), and men who aspired to officer positions had to first serve in the rank-and-file to learn the nature of the job; only then were they eligible for officer status.²²

At that time, the number of policemen in Anatolia was estimated at 10,000.²³ The Cyprus Convention and the Congress of Berlin (1878), both of which followed the Russian-Ottoman War (1877–78), ended with strong European demands for Ottoman reforms in many administrative areas, including policing. Nadir Özbek argues that the

Turkish Studies 1 (1980): 99–106; Mehmet Seyitdanlıoğlu, *Tanzimat Devrinde Meclis-i Vala (1838–1868)* (Ankara: Türk Tarih Kurumu, 1999). Since this paper deals mostly with the latter task of the council it will hereafter be referred to as the Supreme Court.

18 Ergin, *Mecelle-i Umur-i Belediye*, cilt 2, 880–885; Halim Alyot, *Türkiye’de Zabıta: Tarihi Gelişim ve Bugünkü Durum* (Ankara: İçişleri Bakanlığı Yayınları, 1947), 66–67; Necla Arslan, “II. Mahmut Döneminde Modern Polis Teşkilatının Kuruluş Girişimleri İlk Karakol Binaları,” *İstanbul* (1997): 37.

19 Hikmet Tongur, *Türkiye’de Genel Kolluk Teşkili ve Görevlerinin Gelişimi* (Ankara: T. C. İçişleri Bakanlığı Emniyet Genel Müdürlüğü Yayınları, 1946), 162–165.

20 Nadir Özbek, “Osmanlı İmparatorluğu’nda İç Güvenlik, Siyaset ve Devlet, 1876–1909,” *Türkük Araştırmaları* 16 (2004): 70–71.

21 Özbek, *Policing the Countryside*, 51; Ergut, *State and Social Control*, 108.

22 Alyot, *Türkiye’de Zabıta*, 105–106.

23 Alyot, *Türkiye’de Zabıta*, 92.

reforms that followed were not only in response to pressure, but actually reflected a genuine desire for change within the Ottoman government.²⁴

By 1879 the *Asakir-i Zaptiye* was divided into two agencies: the *Gendarmerie* Department (*Jandarma Daire-i Merkeziyesi*), under the jurisdiction of the Army Chief of Staff, and a civilian police force, headed by the Ministry of Police (*Zaptiye Nezaret-i*), which was responsible for urban policing.²⁵ The division occurred in the same year that three major laws redefining the court system were issued: The Law of the *Nizamiye* Judicial Organization, the Code of Criminal Procedure, and the Code of Civil Procedure. This congruence is not accidental, for crime-fighting and crime-detection were regulated to meet the needs of the criminal courts system.

Although it was only by the 1870s that policing was regarded as a profession, and only by the 1880s that a civil police force was deployed statewide, the constitution of police accountability was laid down at the early stages of the reforms (1840s-1860s), in response to the changing “social pact”. But, before we move on to examine their formation the terms “direct-access” and “nanny state,” require further clarification.

7.2 “Direct Access”

The term “direct access” was coined by Charles Taylor²⁶ in an effort to understand the origins of modernity. Taylor distinguishes between two central elements of Western modernity, the first of which he calls “the moral order”²⁷ and the second, “social imaginary.”²⁸ According to Taylor, Western society shifted from a “mediated access” vertical society (i.e., pre-modern),²⁹ in which privileged persons or agencies mediated between the people and the sovereign because they were closer to him, to a “direct access,” horizontal society (i.e., modern).³⁰ The term, “direct access” refers to the fact that each member is equidistant from the center, since society is radically horizontal. This shift manifested itself in three areas: the economy, the public sphere, and popular sovereignty.³¹

The liberal principle of equality could only come into being with the rise of the public sphere. Ever since Karl Marx’s essay, “On the Jewish Question,” it was believed

²⁴ Özbek, *Policing the Countryside*, 53.

²⁵ Tongur, *Türkiye’de Genel Kolluk*; Alyot, *Türkiye’de Zabıta*

²⁶ Charles Taylor, *Modern Social Imaginaries* (Durham and London: Duke University Press, 2004), 155–161.

²⁷ Ibid, 3–8.

²⁸ Ibid, 23–33.

²⁹ Ibid, 158.

³⁰ Ibid, 155–161.

³¹ Ibid, 69–141.

that only once the public sphere is stripped of any religious presence, thereby becoming “secular,” could there truly be a public sphere,³² a definition that is perhaps best suited to France and the United States. And indeed, Taylor has been criticized on two points: that nowhere does true absence of religion exist in the public sphere,³³ and that his theory can only be applied to Western societies.³⁴

However, Taylor himself writes that modernity is not a single phenomenon; rather, we should speak of “multiple modernities,” the plural reflecting the fact that other, non-Western cultures, are considered “modern” in their own right.³⁵ The name most often associated with the concept of non-Western modernity is Dipesh Chakrabarty, who addresses the mythical figure of Europe that is often taken to be the original site of modernity, by historicizing the capitalist transition in non-Western countries, and deconstructing the notion of a united “Europe.”³⁶ Taylor also acknowledges that modernity, especially in non-Western countries, can best be understood through institutions and practices,³⁷ rather than through theory.

Studying Ottoman modernity against the backdrop of its practices, we can see how, during the *Tanzimat*, Ottoman society began to shift from “mediated access” to “direct access”. The acknowledgement of legality, the abolition of torture, the gradual abrogation of privileged groups, the abolition of collective responsibility, and the elimination or neutralization of the influence of the *derebeys* and other local lords,³⁸ all support this argument. The establishment of police accountability will serve as an analytical unit and enable us to observe this process.

32 Karl Marx, “On the Jewish Question,” in *Marx: Early Political Writings* (Cambridge: Cambridge University Press, 1994), 28–50.

33 Talal Asad, *Formation of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003).

34 Stephen Crocker, “Charles Taylor. Modern Social Imaginaries,” a book review. *Canadian Journal of Sociology Online* (2005): 2; Peter Van Der Veer, “Secrecy and Publicity in the South Asian Public Arena,” in *Public Islam and Common Goods*, eds. Armando Salvatore and Dale F. Eickelman (Leiden & Boston: E.J. Brill, 2006), 36–37.

35 Taylor, *Modern Social Imaginaries*, 1.

36 Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000).

37 Taylor, *Modern Social Imaginaries*, 2.

38 Kemal H. Karpat, *Ottoman Population 1830–1914: Demographic and Social Characteristics*, (Wisconsin: The University of Wisconsin Press, 1985), 8.

7.3 The “Nanny State”

Whether the term “nanny state” was coined by conservative British MP Iain Macleod in 1965,³⁹ or by former British Prime Minister Margaret Thatcher in 1979,⁴⁰ one thing is certain: the term nanny state is generally used with reference to a policy in which the state is perceived as being excessive in its desire to protect (as a nanny would protect a child), govern, and regulate different aspects of society and social policies. Although the term is used differently, depending on the political context, it is regarded as a derogatory expression by opponents of the interventionist policies associated with the welfare state, which they consider as disrupting and distorting the market economy.

Toledano was the first to use the term “nanny state” in connection with the *Tanzimat* state, which he views essentially as a “patron state”.⁴¹ Discussing the bonds of enslavement in the Ottoman Empire in the nineteenth century, Toledano argues that the *Tanzimat* state gradually assumed the role of patron vis-à-vis the enslaved, and intervened in the enslaver-enslaved relationship. The state thus abandoned its traditional stance of siding with enslavers and protecting their property rights over the enslaved. Instead, the Ottoman government began to assume the role of guardian of the enslaved.⁴² The Ottoman state, accordingly, went beyond protecting the enslaved, intervening in many other relationships that, prior to the *Tanzimat*, fell within the private sphere: victims-perpetrators, husbands-wives, parents-children, communities-individuals, and the like. It thus became, in a positive sense, a protective nanny state. The term therefore loses its pejorative meaning, as it connotes the increasing ability of the state to apply a greater degree of control over society in general, and use its growing power to protect weaker groups in particular. Now that the general framework has been laid out, it is time to move on to the evidence in hand.

7.4 Establishment of the Ottoman Police

Being a nanny state, the *Tanzimat* state safeguarded the weaker social groups (slaves, widows, orphans, victims of crime), but its warrant also extended to the police. This was intended to enable policemen to carry out their assignments and expand the role

³⁹ David Harsanyi, *Nanny State: How Food Fascists, Teetotaling Do-Gooders, Priggish Moralists, and Other Boneheaded Bureaucrats Are Turning America into a Nation of Children* (New York: Broadway Books, 2007), 7.

⁴⁰ Robert Huntington, *The Nanny State* (London: Artnik, 2004), 10.

⁴¹ Ehud R. Toledano, *As If Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven: Yale University Press, 2007), 108–112.

⁴² Ibid.

of the state in the countryside. But in practice, the limits of the state's patronage over policemen defined police accountability.

Serving as a policeman in the *Asakir-i Zaptiye* was hazardous work.⁴³ Court records of the time reveal that in many instances policemen were assaulted, knifed, and shot, some dying in the line of duty.⁴⁴ It would seem that the relatively numerous attacks on policemen were a negative reaction to the state's attempts to expand its influence. The police presence disturbed the balance of country communities. Shooting the police was metaphorically like shooting the "state," a statement that such behavior was not welcome. At the same time, the police force was also an extension of the nanny state, whose role was to protect the community. Aware of the risks, the police did not hesitate to shoot at suspects.⁴⁵

Invested with new entitlements, Ottoman subjects very quickly learned to avenge the death of their loved ones by taking legal action. However, the Supreme Court made it clear that policemen could not be sued for killing criminals in the line of duty, as the following cases show. In the first case, two youngsters insulted the residents of the Armenian neighborhood in Izmir. The locals summoned the police—the extension of the nanny state—to protect them. When policemen arrived on the scene, the two youths drew their weapons. Both were apprehended; however, one was shot and injured by the police, and later died as a result of his wounds.

The policemen were taken to court by the juvenile's heirs. Reviewing the case the Supreme Court held that the victim had been disobedient and so bold as to draw his weapon against the police. Therefore, the Supreme Court ruled, there was no basis for the dead criminal's heirs to claim compensatory blood money.⁴⁶ With the publication of the 1858 criminal code, the practice of acquitting policemen in such cases was given legal justification. Article 189 exempted policemen from liability in cases of

⁴³ The penalty for assaulting state officials was heavier than when the same assault was carried against a civilian. Relevant articles in the 1840 and 1851 penal codes include drawing weapons, discharging a shot, and wounding with a bullet, see: 1840 OPC, Ch. 9 Art. 3; Lütfi, *Osmanlı Adalet*, 1840 OPC, Ch. 9 Art. 3, 133–134; idem, *Osmanlı Adalet*, 1851 OPC, Ch. 1 Art. 16, 144. In the 1858 OPC, Art. 115 simply states that the penalty for assaulting a state official was twice that of a similar assault carried out against a civilian, see: John A. Strachey Bucknill and Haig Apisoghom S. Utidjian, *The Imperial Ottoman Penal Code: a Translation* (London: Oxford University Press, 1913), 90–91.

⁴⁴ See for example: BOA, AYN.D, 470, p. 48 1263. C. 23 (7 Jun 1847); BOA, AYN.D, 474, p. 5 1265. Ca. 6 (31 March 1849); BOA, I.MVL, 245/8884, 1268. Za. 18 (3 Sep. 1852); BOA, AYN.D, 470, p. 101, 1263. N. 28 (8 Sep. 1847); BOA, AYN.D, 475, p. 100, 1266. Ca. 25 (8 Apr. 1850); BOA, AYN.D, 484, p. 23, 1275. L. 7 (11 May 1859); BOA, AYN.D, 484, p. 110, 1276. B. 22 (14 Feb. 1860); BOA, AYN.D, 500, p. 108, 1282. S. 21 (15 Jul. 1865); BOA, AYN.D, 501, p. 12, 1282. Ca. 5 (25 Sep 1865).

⁴⁵ BOA, I.MVL, 279/10920, 1269. L. 20 (27 Jul. 1853); BOA, AYN.D, 484, p. 21 Zaptiye müşiriyet ve Hüdavendigar 5 Ş. 1275 (10 March 1859).

⁴⁶ BOA, AYN.D, 475, p. 5, 1266. M. 3 (18 Nov. 1849).

battery, wounding, and killing in the line of duty.⁴⁷ This case is exceptionally interesting, since it implies that when a policeman was sued for *legal* acts performed in the line of duty, he would be protected by the state.

In another case, a policeman was ordered by the local court to pay blood-money to the heirs of Hafız from Trabzon, who died under interrogation, although the policeman was not explicitly or implicitly accused of torturing Hafız. Payment was set at 5,000 *kuruş*, a huge sum, equivalent to some two years of the policeman's wages. On July 20, 1864 the Grand Vezir's Office instructed the Ministry of Finance to pay this sum from the Treasury (*Hazine*), in accordance with an imperial order.⁴⁸

By so ruling, the imperial government helped reinforce the idea that a policeman on duty was not a private individual but rather an extension of the state, and therefore entitled to its protection. But we should take note of the fact that it did not overturn the local court's ruling. The Supreme Court protected the interests of the next of kin of Hafız, the deceased suspect, thus fulfilling its duty as a nanny state. The subtext of this trial, which does not concern us here, is that the lower courts did not always fully understand the nature of the reforms.

However, when policemen committed off-duty offenses, the state washed its hands of them and provided no protection. In this way, it set limits to its support for its agents, and granted new entitlements to its subjects, as the next case shows. Hasan from İnegöl, a sub-district of Hüdâvendigâr Province, was a policeman. His son, Hatip, picked up the service pistol that his father had left unattended in the room of their home and, being unaccustomed to handling it, accidentally discharged a shot. The bullet injured one Ismail, who later died of his wounds. Ismail's separated wife, İhsan, sued Hasan in both the *Şeri* and *Nizami* courts.⁴⁹

She did so as the mother of Ismail's minor heirs, and as their legal guardian. The claim was proved, and a blood-money (*bedel sulhu*) agreement was reached between the families. In return, the charges were dropped and Hasan was freed on bail. However, the Supreme Court reviewed the case and, in accordance with Article 182, sentenced the policeman to a year's imprisonment at Mentеше. Article 182 refers to negligent (*dikkatsizlik*) homicide as a result of disregarding regulations, the punishment for which was six months to two years imprisonment.⁵⁰ Hasan was off-duty at the time, and Ismail did not pose a threat to him. Therefore, the Supreme Court overturned the lower court's decision to release Hasan, and despite the agreement reached with the victim's heirs, sentenced him to prison for negligence.

⁴⁷ 1858 OPC, Art. 189. See, for example, lawsuits rejected by the Supreme Court: BOA, AYN.D, 499, p. 46, 1281. Ş. 3 (1 March 1865); BOA, AYN.D, 500, p. 113, 1282. S. 4 (28 Jun 1865).

⁴⁸ BOA, AYN.D, 499, p. 57, 1282. S. 16 (20 Jul. 1864).

⁴⁹ BOA, AYN.D, 499, p. 123, 1281. B. 6 (6 Dec. 1864).

⁵⁰ Bucknill and Utidjian, *IOPC*, 137–128.

During the 1840s, 1850s, and 1860s, the Ottoman state sought to define police accountability. This was part of the shift from a vertical society governed by “mediated access,” into a horizontal society based on “direct access”. Policemen were not a privileged group, with extra rights. The transition to a horizontal society granted Ottoman subjects new entitlements—they could now sue the police in court. The court was where new boundaries were set. It was in such cases that the fine line was drawn between protecting state agents and preventing them from becoming a privileged group. These rulings helped to establish new norms, namely, legality, civil rights, and equality before the law.

One of the most significant changes in police work during the 1840s, 1850s, and 1860s, had to do with pre-trial procedures. The new criminal court system was created in 1840. As the volume of cases brought before the court increased, the pre-*Tanzimat* method whereby plaintiffs brought their cases before the court no longer sufficed. Gradually the *Asakir-i Zaptiye* was instructed to prepare cases and bring them before the court. Such pre-trial procedures included the collection of evidence, witness testimonies, and extracting confessions. The law of evidence was still based either on voluntary confessions or on the testimonies of two reliable male witnesses, as was the case under the “Courts of Islamic Law” (*Şeriat*).⁵¹ Physical and circumstantial evidence was only introduced in a supportive capacity, but over time, it carried more weight, especially documentary evidence.

However, when the Gülhane (Rose Chamber) Rescript was announced (November 3, 1839),⁵² it included, among other things, the Sublime Porte’s (*Bab-ı Âli*) intentions to amend the individual rights of all Ottoman subjects, based on equality before the law. In order to ensure the individual’s rights to life, honor, and property, regardless of class or religion, the decree officially put an end to administrative punishment, ensuring the promulgation of a new criminal code. And indeed, the first *Tanzimat* Criminal Code was issued on May 3, 1840, and the practice of *judicial torture* was outlawed as early as 1840, with the publication of instructions to the provincial council.⁵³

The term “judicial torture” itself requires clarification. First of all, an historical distinction should be made between judicial torture, and various painful modes of

51 The term “Courts of Islamic Law” does not describe all the activities of these courts. In practice they were the State’s courts and dealt with all matters, including criminal cases. See: Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (California: University of California Press, 2003), 91.

52 Roderic H. Davison, “Tanẓīmāt (a.),” *Encyclopaedia of Islam, Second Edition*, eds. P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs, (Leiden: Brill Online, 2010).

53 “Taşra Meclisine verilen talimat,” (instructions given to the provincial councils), Art. 37, in: *Düstür*, 2nd edn. (Istanbul: Matbaa-i Amire 1282 (1866) Vol. 1: 870–884. See also: Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge and New York: Cambridge University Press, 2005), 127.

punishment imposed as sanctions on a person already convicted. No punishment should be characterized as torture.⁵⁴ The definition of judicial torture comprises the infliction, or the threat of inflicting, pain intended to elicit intelligence or forensic proof, employed by officers of the state to gather evidence for judicial proceedings.⁵⁵

Baber Johansen argues that co-opting the *ulema* (men schooled in *medreses*) to state officialdom (to perform legal, academic, and ritual-communal services for the state), facilitated this change, since they now served the needs of the sovereign. Originally aimed at guaranteeing the rights of the defendant, the judicial process now aimed to protect the public interest (*maslaha*). This doctrine is encapsulated in the Ottoman term *siyaset[en]*.⁵⁶ The Mamluks accepted judicial torture as legitimate in the thirteenth century, around the same period as medieval Europe. Such a coincidence may suggest mutual influence and an exchange of legal thought.⁵⁷

Another change that took place in the legal sphere under Mamluk rule was the notion that only the spoken word constituted proof. Ibn Qayyim al-Jawziyya (d. 1351) believed that a sign could better serve as proof in court. For example, a mark on an animal was indicative of property rights. This is where judicial torture came into play. A person suspected of theft could be convicted, based not on his confession, but rather on the production of the stolen goods, which could serve as evidence of guilt. It was for the purpose of producing such evidence, or discovering the thief's accomplices, that judicial torture was allowed under *siyaseten*.⁵⁸

The Ottomans followed the Mamluks, and adopted the use of judicial torture. However, torture was never arbitrary. Rather, certain conditions had to be met before torture could legally be inflicted:

1. The accused had to have a bad reputation, and indications of his guilt (such as possession of the stolen goods) had to be produced.
2. S/he was accused of serious bodily harm.
3. Under interrogation his/her name was mentioned by a fellow criminal as an accomplice to a crime.⁵⁹
4. The accused had a criminal record.⁶⁰

⁵⁴ John H Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago and London: The University of Chicago Press, 1977), 3.

⁵⁵ Ibid, 3; James Heath, *Torture and English Law: An Administrative and Legal History from the Plantagenets to the Stuarts* (Westport and London: Greenwood Press, 1982), 3.

⁵⁶ Ibid 179–181.

⁵⁷ Ibid, 171, 193.

⁵⁸ Ibid, 188–192. In the Ottoman case, see: Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), 244–245. For similar descriptions of torture in Europe, see: Langbein, *Torture*, 4–5

⁵⁹ Peters, *Crime and Punishment*, 82; Heyd, *Studies*, 106 (art. 43), 116 (art. 82), 119 (art. 90), 202.

⁶⁰ Heyd, *Studies*, 252–253. Under Roman canonical law, the use of torture was permitted under similar restrictions, see: Langbein, *Torture*, 5.

Judicial torture was not used to secure what modern-day British or American lawyers would call a guilty plea, that is, a confession of guilt. Under Ottoman law, a confession obtained under torture was valid only in cases where it produced supporting signs (*alâim*) of the suspect's guilt.⁶¹ In other words, under torture, the suspect had to confess to details of the crime that only a guilty person would know, a stricture known in Roman canonical law as *criminalis carolina*.⁶² Furthermore, care had to be taken that the accused did not die under torture before his guilt was proven; ideally, the accused was to be executed after being convicted in court.⁶³ However, tension existed with regard to the use of judicial torture for two reasons: (a) because it was possible that innocent people would wrongly confess, solely to end the pain, and (b) because there was a chance that torture would be inflicted due to false accusations.⁶⁴

Going back to the mid-nineteenth century, with the *Tanzimat*, Ottoman subjects received new entitlements, which made judicial torture illegal and the evidence it produced inadmissible in court. Although at first it was observed more in theory than in practice, with time these new norms were adopted by offenders as a line of defense, and later by victims, judges, and finally by policemen and officers. As we shall see, active measures were required on the part of the central government to embed these norms in police work. We can see how these norms were formally established within the criminal justice system.

As early as 1840, criminal courts were instructed to prohibit the use of torture. By 1856 the Reform Edict stated that "Corporal punishment shall not be administered even in the prisons, except in conformity with the disciplinary regulations established by the Sublime Porte, and everything that resembles torture shall be entirely abolished".⁶⁵ With the publication of the 1858 Ottoman penal code, these instructions became law. According to Article 103, any public servant or officer who tortured a person accused of an offense, or instructed another to do so, was to be sentenced to between three and fifteen years in prison, and could never again hold public office. In the event that torture was carried out by a low-ranking policeman under orders of his superior, the penalty was to be imposed on the superior officer. If, as a result of torture, a person died or lost the use of a limb, the guilty officer was to be punished under the articles applicable in such cases.⁶⁶

⁶¹ Heyd, *Studies*, 253; Peters, *Crime and Punishment*, 82–83; On the Mamluk origins of this concept see: Baber Johansen, "Signs as Evidence: the Doctrine of Ibn Taymiyya (1263–1328) and Ibn Qayyim al-Jawziyya on Proof" *Islamic Law and Society*, vol. 9, no. 2 (2002): 188–192.

⁶² Langbein, *Torture*, 5.

⁶³ Heyd, *Studies*, 253.

⁶⁴ *Ibid.*, 253–254; Peters, *Crime and Punishment*, 82–84.

⁶⁵ J.C. Hurewitz, *The Middle East and North Africa in World Politics: A Documentary Record Vol.1: European Expansion, 1535–1914* (New Haven, CT: Yale University Press, 1975), 315–318.

⁶⁶ See 1858 OPC, Art. 103.

In practice these regulations took time to fully take hold, as often happens in times of transition. Documents indicate that policemen were still sporadically applying torture during interrogations for a number of reasons.⁶⁷ To begin with, while the *Asakir-i Zaptiye* was invested with the mandate to prepare cases and submit them to court, it lacked sufficient professional manpower. Most policemen held the position in a temporary capacity, were uneducated and lacked sufficient understanding of the reforms. What is more, cases were still being decided based either on the testimony of two valid witnesses or on a voluntary confession obtained from the suspect, but the police did not have the necessary tools to ensure a conviction in court.

We should keep in mind that prior to the *Tanzimat* it was the judge who handed over suspects to the executive officers (*ehl-i örf*) and ordered them to apply torture, thus ensuring some form of discretion. Now that interrogations were instigated by the police, who were pressured to solve cases and bring suspects to court, the necessary checks and balances were absent. And finally, some governors and police officers of the “old school” sincerely believed that torture was an essential and legitimate part of interrogation. The following two cases illustrate the extreme measures taken by the central government, especially the Supreme Court, to uproot the use of torture. They further suggest that suspects/felons learned very quickly to use this new prohibition against their interrogators. Policemen were exposed to scrutiny over such accusations.

During February and March of 1848, a triple murder case heard in Izmir’s Grand Council (the criminal court with the jurisdiction to try felonies) reached an impasse.⁶⁸ Twelve men had been found guilty of a triple murder, confessing to the crime under interrogation. Some of them were sentenced to death, and some were sentenced to corporal punishment by flogging. Once the decree to execute the convicted men arrived in Izmir, all those indicted retracted their confessions and denied all charges brought against them, claiming that the confessions had been extracted by force. One council member, a judge, Headman (*Kocabaşı*) Yovana, issued a statement claiming

⁶⁷ See for example: BOA, AYN.D, 471, pp. 142–143, 1264. Ra. 27 (3 March 1848); BOA, AYN.D, 499, p. 57, 1282. S. 16 (20 Jul. 1864); See also, Ehud R. Toledano, *State and Society in Mid-Nineteenth-Century Egypt* (Cambridge: Cambridge University Press, 1990), 174–175; Milen V. Petrov, “Everyday Form of Compliance: Subaltern Commentaries on Ottoman Reform, 1864–1868,” *Comparative Studies in Society and History* 46/4 (2004): 743; Roger A. Deal, *Violent Crime in Hamidian Istanbul* (Unpublished Ph.D. dissertation, The University of Utah, 2006), 38; Kent Fielding Schull, *Penal Institutions, Nation-State Construction, and Modernity in the Late Ottoman Empire, 1908–1919* (Unpublished Ph.D. dissertation, UCLA, 2007), 123–124; Ergut, *Policing the Poor*, 157.

⁶⁸ Between 1840 and the late 1860s provincial councils served as criminal courts. They operated as tribunals. All council members (officeholders, representatives of the community, and legal men legislators? jurists?) served as judges. On the criminal court system in the provinces 1840–1860s, see: Ekrem Buğra Ekinci, *Osmanlı Mahkemeleri* (Istanbul: Anı Sanat, 2004), 126–134.

that since the confessions were extracted by force, they were inadmissible in a court of law.⁶⁹

Since the allegations made by Headman Yovana were grave, the Supreme Court ordered one Sami Efendi to set up an inquiry into the case.⁷⁰ The inquiry concluded that the claim made by the convicted persons was false, and that their confessions had not been extracted from them by force. All the other council members presiding as judges in the case felt that the confessions were valid. Sami Efendi submitted his conclusions to the Supreme Court; however, Headman Yovana was unwilling to comply with Sami Efendi's conclusions. The case reached a dead end. Since no conviction could be reached, the Supreme Court ordered that the headman and the convicts be sent to Istanbul.

The outcome of this case remains unknown; yet it illustrates the fact that legality was undisputed, for if confessions were extracted illegally, then guilt was not proven. As long as even a single council member believed this to be the case, the sentence could not be upheld. Thus, allegations of torture empowered suspects and convicted persons, since they could to some extent postpone their execution or imprisonment. Additionally, this new tool enabled suspects/felons to shift the pressure to the police, who had to convince the court they did not act illegally, as the next case shows.

Panayot, a vineyard owner, died in Izmir's prison sometime in 1849 or 1850. Suspected of complicity in an opium robbery, he was arrested along with his friend Lekter.⁷¹ After Panayot's death, Lekter claimed that both he and Panayot had been tortured during their interrogation. Lekter accused Inspector Bekir Ağa, head of the investigation, of ordering the torture. The Sublime Porte appointed Ali Nihat Efendi, a clerk at the Porte's Translation Bureau (*Tercüme Odası*), to head an investigation.

Ali Nihat Efendi's mandate was to establish whether or not torture had been applied and, if so, who ordered it, who administered it, and who was subjected to it. Ali Nihat's commission conducted the investigation together with the governor of Aydın (the province which included Izmir), and Izmir's criminal court. The commission worked for nearly a year and a half on the case. During that time Inspector Bekir Ağa (head of the investigation), was suspended from work and remained at home, awaiting the commission's conclusions.

At some stage during the commission's deliberations another claim of torture related to the case emerged. Manastırlı Mihail, a builder, had come to Tire (90 kilometers south of Izmir) in search of work. Three or four days after arriving in Tire, on a

⁶⁹ BOA, AYN.D, 471, pp. 142–143 Izmir, 1264.Ra. 27 (3 March 1848).

⁷⁰ Sami Efendi may have been Sami Mehmet Efendi, later Head Clerk (*serhalife*), who died on 12 January 1878. See, Mehmed Süreyya, *Sicil-i Osmanî: Osmanlı Ünlüleri* cilt 5 (Tarih Vakfı Yurt Yayınları, 1996), 1479.

⁷¹ The events described are based on the following court case: BOA İ.MVL 245/8884, 1268. Za. 18 (3 Sep. 1852).

Saturday, as he sat in a coffee shop, between five and ten policemen appeared. Their commander, Çavuş Şişlioğlu Hüseyin, asked the proprietor several questions. He then asked Manastırlı Mihail, “Where are you from?” Manastırlı Mihail replied, “I am a foreigner (*Yabancı*)”. He was asked what his occupation was, for how long he had come, and from where.

After Manastırlı Mihail answered all these questions, the sergeant arrested him. According to the commission, Manastırlı Mihail was suspected of being a member of Katırcı Yani’s gang, the perpetrators of the opium robbery referred to above. The policemen took Mihail directly to the governor’s mansion in Tire and handed him over to the jailer. The following morning, police cavalry sergeant Kayserili Deli Ahmet Çavuş interrogated Manastırlı Mihail. After an hour of interrogation he ordered the prison attendant to torture Manastırlı Mihail. At some point the torture was stopped by the local governor, the suspect was brought before İzmir’s criminal court and he was freed on bail.

When this torture was brought to the knowledge of the commission, police sergeant Deli Ahmet Çavuş and prison attendant Zincirci Mustafa were arrested and incarcerated until the commission submitted its findings and recommendations a year and a half later. During that time they were interrogated both in İzmir and in Istanbul. Deli Ahmet Çavuş denied that he had given orders to torture Mihail, never wavering from his version of the events. Zincirci Mustafa, who was probably less mentally stable, admitted applying torture to Manastırlı Mihail. However, he claimed he was ordered to do so by the sergeant.

The commission and the governor of the province of Aydın felt that a year and a half of imprisonment was sufficient punishment for the crime, and recommended that the two be released. Unlike these two policemen, Inspector Bekir Ağa did not make the commission’s work easy. Throughout his interrogation, he refrained from giving any names of policemen who could support his version, and his testimony contradicted information obtained from other witnesses. Ali Nihat Efendi summoned the men under Bekir Ağa’s command, along with the men whom Lekter had mentioned in his interrogation. All of them supported Bekir Ağa’s testimony, saying that Lekter had fabricated the story.

On June 10, 1852, Ali Nihat Efendi, head of the inquest into the death of Panayot, submitted his conclusions to the Supreme Court. The commission found no evidence that Panayot and Lekter had been tortured. On September 3, 1852, the Supreme Court adopted the commission’s conclusions and recommendations, and two days later Grand Vezir Mehmet Emin Ali Paşa added a footnote instructing Aydın’s governor to exonerate Bekir Ağa, reassign him to his position as inspector, release Zincirci Mustafa and Deli Ahmet Çavuş after a year and a half in prison, in accordance with the commission’s recommendations, and discharge them from the force.

Bekir Ağa, Kayserili Deli Ahmet Çavuş, and Zincirci Mustafa may not have fully understood the new entitlements bestowed on civilians by the nanny state, and their grasp of the changing legal arena was extremely limited, but they were not the only

ones to regard torture as a vital interrogation tool. In a letter to the Supreme Court attached to the file of this case, Izmir's governor (in charge of both the police and the criminal court) wrote: "Since we are not permitted to inflict torture, even when it is clear that the suspects are the perpetrators, we cannot arrive at the truth...I therefore place the matter [of the opium robbery] in your hands [i.e., the Supreme Court]". In other words, at this stage, although the men in the field reluctantly complied with the new norms, they definitely did not believe in them.

While Kayserili Deli Ahmet Çavuş and Zincirci Mustafa were imprisoned, Bekir Ağa, the officer, was only suspended. As the officer who brought cases to court, Bekir Ağa was well aware of what he should and should not say in order to avoid incriminating himself. Zincirci Mustafa had no legal knowledge and therefore was unaware of the implications of his statements. It could even be suggested that he was naïve, since he could have denied Manstırlı Mihail's version, and the court would have probably preferred to accept the version of Kayserili Deli Ahmet Çavuş than that of the suspect, yet he chose to tell the truth, a fact that cost him a year and a half behind bars and the loss of his job. It seems that Lekter and Manastırlı Mihail knew their rights. They enjoyed the nanny state's protection, proved that Ottoman society was becoming more horizontal, and verified that its subjects were equal before the law. Policemen, it seems, were certainly not a privileged group.

7.5 Conclusion

By introducing a new "social pact" the *Tanzimat* state faced a dilemma. On the one hand, its law enforcement community needed all the state backing it could get. Their lives were at stake, since attempts to expand the influence of the state into the countryside were being challenged by physical attacks on policemen. On the other hand, the state had to restrict the power of policemen and officers to suit the new standards. Both developments occurred during the early stages of the reforms (1840- mid-1860s), and were important steps in the creation of the modern Ottoman policeman.

As privileged groups no longer existed by the 1860s, at least not before the law, police power was restricted and police accountability was clearly defined. This was but one example of the expansion of the principles of "direct access" in Ottoman society. Despite the fact that the Ottoman public sphere was not stripped of religious presence, its society was gradually becoming horizontal. Simultaneously, once the elite perceived the state as an active player, it assumed the role of a nanny state. In its efforts to protect its subjects, the nanny state granted new entitlements, as befits a horizontal society. Since prior to the 1870s-1880s, all legal reforms had been enacted within the Ottoman legal tradition, they are an indication of internally propelled modernism.

Avner Wishnitzer

8 “At Approximately Eleven, Just Before Nightfall”: An Introduction to Ottoman Temporal Culture¹

8.1 Introduction

On 16 May 1851 the official Ottoman gazette, the *Takvim-i Vekayi*, informed its readers that upon a decree issued by the sultan, one of the ferries of the Imperial Shipyards (*Tersane-i Amire*) would be assigned to carry regular transportation along the Bosphorus. The ferry, it was said, would depart from the Golden Horn “at approximately eleven o’clock, just before nightfall,” (*akşam üzeri saat on bir sularında*), it would dock at various places along its route, and stop for the night in İstinye, on the northern part of the strait. The boat was to leave İstinye “at approximately four in the morning,” and pass through the same designated locations on its way back to Eminönü, its final destination. Government officials interested in the new service were requested to register with one of the offices at the Sublime Porte.²

This short notice encapsulates within it some of basic features of Ottoman temporality, features that were only poorly understood by contemporary foreign observers, and are still inadequately explained in current research. European travelers often found the Ottomans to be “indifferent of time”, an attribute that was sometimes associated with their alleged laziness and lack of “civilization”.³ Even if more implicitly,

1 This article is based on a doctoral dissertation written at Tel Aviv University under the supervision of Prof. Ehud R. Toledano. I wish to thank Prof. Toledano for his guidance and continuous support. The article was written during a year of post-doctoral research at the University of Washington. I would like to thank my mentor, Prof. Reşat Kasaba, Prof. Walter Andrews, Prof. Selim Kuru, and the participants of ‘Turkish Circle,’ whose comments greatly contributed to this work. This is a good opportunity to thank the Colton Foundation for the generous scholarship I received throughout my PhD studies, and the Fulbright Program for its support during my post-doctoral research.

2 The text is brought in full in *Bogaziçi Sirket-i Hayriye: Tarihçe, Salname* (Istanbul: Ahmed İhsanve Şürekası, 1330/1914), 2–3, no. 1.

3 See for example John Foster Fraser, *Pictures from the Balkans* (London: Cassell & Company, 1912), 120. Lawrence J. L. D. Zetland, *On the Outskirts of Empire in Asia* (London: William Blackwood and Sons, 1904), 31–32. See also Lucy M. J. Garnett, *The Turkish People: Their Social Life, Religious Beliefs and Institutions and Domestic Life* (Whitefish, MT: Kessinger Publishing, 2004 (originally published 1909)), 23. Assessing the progress of civilizations and social groups according to their level of [clock] time consciousness became a common trend in 19th century Europe, and was finally picked up by some Ottoman elites toward the end of that century. For a more comprehensive discussion, see Avner Wishnitzer, “‘Our Time’: On the Durability of the Alaturka Hour System in the Late Ottoman Empire,” *International Journal of Turkish Studies*, 16 (2010): 47–69. In his fine book, *On Barak* explores this connection between the quotidian level of time organization, and notions of progress and modernity. See

some scholarly works on Ottoman history similarly discuss Ottoman temporality, which is often reduced to its religious dimension, in contradistinction to a similarly uniform, one-dimensional modern time consciousness.⁴ Mechanical clocks, allegedly the representatives of secular, empty and homogenous time, are usually identified with the latter. According to most accounts, they remained somewhat alien to indigenous cultures before the second half of the nineteenth century, and attracted interest mainly as gadgets, or as symbols of power and status. One scholar, for example, writes that “the clock, for the Ottomans, was the technological product of a foreign culture” and speculates that, like in China, mechanical clocks were accepted as an “amusing oddity”.⁵ The Ottomans, so it seems, still had to learn how to use clocks “in the proper way,” that is, the European way.⁶

On Barak, *On Time: Technology and Temporality in Modern Egypt* (Berkeley: University of California Press, 2013).

⁴ See for example Jason Goodwin, *Lords of the Horizons: A History of the Ottoman Empire* (London: Vintage, 1999), 149–158. For an example of a somewhat nostalgic treatment of the very same ‘Turkish time,’ see Şule Gürbüz, “Alaturka Saat, Alaturka Zaman,” in *Zamanın Görünen Yüzü: Saatler*, eds. Şennur Şentürk and Selahattin Özpabıyıklar (Istanbul: Yapıkredi, 2009), 57–66. See also Touraj Atabaki, “Time, Labour-Discipline and Modernization in Turkey and Iran: Some Comparative Remarks,” in *The State and the Subalterns: Modernization, Society and the State in Turkey and Iran*, ed. Touraj Atabaki (London: I.B. Tauris, 2007), 1–16. Ekmeleddin İhsanoğlu and Feza Günergun, “Osmanlı Türkiyesinde ‘Alaturka saat’ten ‘Alafranga saat’e Geçiş,” in *XUlusal Astronomi Kongresi (2–6 Eylül 1996)* (Istanbul: İstanbul Üniversitesi Fen Fakültesi, Astronomi ve Uzay Bilimler Bölümü, 1996), 434–441; Doğan Gündüz, “Alaturka Saatten Alafranga Saate Geçiş: Osmanlı’nın Mekanik Saatte Buluşması,” *İstanbul* 51(2004): 120–126; Mehmet Bengü Uluengin, “Clock Towers in the Ottoman Empire and in the Turkish Republic,” *IJMES*, 42/1 (2010): 17–36. See also my critique of Uluengin’s article: Avner Wishnitzer, “A Comment on Mehmet Bengü Uluengin’s ‘Secularizing Anatolia Tick by Tick: Clock Towers in the Ottoman Empire and the Turkish Republic,’” *IJMES*, 42/4 (2010): 537–545. Uğur Tanyeli has made the most significant attempt to understand the Ottoman use of clocks in its context, but even he characterized Ottoman temporality merely as “religious.” See Uğur Tanyeli, “The Emergence of Modern Time Consciousness in the Islamic World and the Problematics of Spatial Perception,” in *Anytime*, ed. Cynthia C. Davidson (Cambridge, Mass: MIT Press, 1999), 162.

⁵ See Fatma Müge Göçek, *East Encounters West: France and the Ottoman Empire in the Eighteenth Century* (Oxford: Oxford University Press, 1987), 105–106. For similar ideas about clocks as ‘gadgets’ or status symbols, see Uğur Tanyeli, “Norms of Domestic Comfort Luxury in Ottoman Metropolises: Sixteenth to Eighteenth Centuries,” in *The Illuminated Table, The Prosperous House: Food and Shelter in Ottoman Material Culture*, eds. Suraiya Faroqhi & Christoph K. Neumann (Würzburg: Ergon Verlag, 2003), 315; Kemal Özdemir, *Ottoman Clocks and Watches* (Istanbul: Creative Yayıncılık, 1993), 144–145.

⁶ In fact, the use of clocks in 18th century Europe was much more diversified than is often supposed. For the reckoning of hours in early 19th century southern Italy, see Peter E. Laurent, *Recollections of a Journey through Various Parts of Greece Turkey and Italy made in the Years 1818 and 1819* (London: G and W. B. Whittaker, 1821), 165. For late 18th century Berlin, see Michael J. Sauter, “Clockwatchers and Stargazers: Time Discipline in Early Modern Berlin,” *American Historical Review* 112/3 (2007): 685–709. For late 18th and early 19th century England, see E. P. Thompson, “Time, Work Discipline, and Industrial Capitalism,” *Past and Present*, 38(1967): 56–97. For 18th century Sweden, see Henrik Ågren,

In what follows I examine the use of clocks in the Ottoman Empire not against some model cast along late nineteenth century, western European lines, but in terms of the temporal culture of the Ottomans themselves. The term “temporal culture” is here used to denote a historically created system of time-related practices, conventions, and values that structures the temporal dimension of social interaction and fills it with meaning. The way the Ottomans used clocks, I argue, was shaped by inner logic of their temporal culture and did not upset its coherence. However, over the second half of the nineteenth century, this fabric of practice and meaning began to unravel under the pressures of internal and external changes of unprecedented scale. Ottoman temporal culture then entered a phase of rapid transformation.⁷

8.2 Reading the Clock, *Alaturka* or: When is Eleven O'clock Anyway?

Let us now return to the notice published in the *Takvim-i Vekayi* and start from the basics. In order to understand how eleven o'clock could be “just before nightfall,” there is a need to say a few words about the different ways time was reckoned in the Ottoman Empire. As shown below, several systems were used concurrently and it is therefore important to understand how they related to one another.

The oldest hour system that was still in use in the nineteenth century was the originally Babylonian system of seasonal hours (also known as “temporal hours”). According to this system, the day (*ruz*) and the night (*şeb*) were each divided into a set of twelve units which were counted from sunset to sunrise, and then from sunrise to sunset. It is readily understood that the length of these units changed as the relation between day and night varied throughout the year.⁸ The first hour of daytime, for example, was 1/12 of the entire length of daylight at a specific date and latitude, measured from sunrise. High noon, according to that scheme was always at the end of the sixth hour and sunset, at the end of the twelfth diurnal hour.

“Time and Communication: A Preindustrial Modernisation of the Awareness of Time,” *Scandinavian Economic History Review*, 49/2 (2001): 55–77.

⁷ Given the limited scope, I focus here on some of the more quotidian, practical aspects of Ottoman temporal culture. The complex connections between Ottoman temporality and power, and the meanings associated with time are discussed in my *Reading Clocks Alla Turca: Time and Society in the Late Ottoman Empire* (Chicago: University of Chicago Press, 2015).

⁸ David King, *In Synchrony with the Heavens: Studies in Astronomical Timekeeping and Instrumentation in Medieval Islamic Civilization*, vol. 1 (Leiden: Brill, 2004), 591. On temporal/seasonal hours see also Gerhard Dohrn-van Rossum, *History of the Hour: Clocks and Modern Temporal Orders* (Chicago: University of Chicago Press, 1996), 19. For their adoption and relation to prayer names in Early Islam, see King, *In Synchrony*, vol. 1, 590–596. For the Ottoman context, see Atilla Bir, “Zamanı Belirlemeye Yarayan Aletleri,” in *Osmanlı İmparatorluğunun Doruğu 16.Yüzyıl Teknolojisi*, ed. Kazım Çeçen (İstanbul: Omas ofset A.Ş., 1999), 231–235.

Since it was this scheme that served as the basis for the Islamic prayer cycle, there was a close correlation between the times of the daily prayers and the temporal hours. It is thus appropriate to discuss the prayer cycle in some detail. Prayer times in the early days of Islam were apparently modeled after the seven daily prayers of early Syrian Christianity, with the omission of the sunrise prayer, which had been explicitly prohibited by the prophet. As in Syrian Christianity, the three prayers to be performed during daylight (*duha*, *zuhr*, and *‘asr*) corresponded to the end of the third, the sixth and the ninth temporal hours of daylight. The *duha* prayer, which was performed at mid-morning, was later abandoned and the number of obligatory daily prayers was consequently set at five.⁹

The prayer cycle thus offered a rather convenient, if crude, method for the partition of the day. In fact, it was the prayer cycle, rather than the system of seasonal hours, that directly governed the temporal dimension of social life, and regulated the rhythms of various early modern Ottoman institutions. Markets, for example, were usually opened right after the morning prayer and closed either before the afternoon or the evening prayer.¹⁰ Work routine in the bureaus of the central administration was no different. In the eighteenth century, to give just one example, grand vezirs held a regular council known as *İkinci Divan*, after the afternoon prayer (*ikindi*), which marked its beginning time. Daily routines in mosque-schools, *medreses*, libraries, *hamams*, and a host of other institutions were likewise punctuated by the prayer cycle.¹¹

⁹ During the 8th century, it became more common to define prayer times in terms of shadow increases, rather than with direct reference to temporal hours. See David King, *Astronomy in the Service of Islam* (London: Variorum, 1993), 250–251; Idem, *In synchrony*, 553–556, 633–634.

¹⁰ There were variations in closing times between different markets and probably between different guilds within the same market. Nevertheless, all pre-defined closing times referred either to the afternoon or to the evening prayer. See Esad Bey, “Siroz’da Esnaf Teşkilâtı ve Cemaat Hayatı,” brought in Osman Nuri Ergin, *Mecelle-i Umûr-ı Belediye*, vol. 2 (Istanbul: İstanbul Büyükşehir Belediyesi Kültür İşleri Daire Başkanlığı, 1995), 671. See also Charles White, *Three Years in Constantinople or the Domestic Manners of the Turks in 1844*, vol. 1 (London: Henry Colburn, 1846), 3–7.

¹¹ İsmail Hakkı Uzunçarşılı, *Osmanlı Devletinin Merkez ve Bahriye Teşkilatı* (Ankara: Türk Tarih Kurumu, 1948), 136–138; Ali Akyıldız, *Tanzimat Dönemi Osmanlı Merkez Teşkilâtında Reform (1836–1856)* (Istanbul: Eren, 1993), 26. For a more elaborate discussion of early modern work routines in the central administration, see Avner Wishnitzer, “The Transformation of Ottoman Temporal Culture during the ‘Long Nineteenth Century,’” (PhD dissertation, Tel Aviv University, 2009), 99–104. See also Nil Birol, *Managing the Time of the Bureaucrat in the Late Nineteenth Century Ottoman Administration* (an unpublished MA thesis, Boğaziçi University, 2005), 26–40. On the importance of the prayer cycle for the regulation of medrese life, see Cahid Baltacı, XV-XVI. *Asırlar Osmanlı Medreseleri: Teşkilât, Tarih* (Istanbul: İfran Matbaası, 1976), 44; Ahmet Cihan, “Social Life in the Ottoman Medrese,” in *The Great Ottoman Turkish Civilisation*, vol. 2, ed. Kemal Çiçek et. al. (Ankara: Yeni Türkiye, 2000), 646. See also Ziya Kazıcı, *Osmanlı’da Eğitim – Öğretim* (Istanbul: Bilge Yayıncılık, 2004), 163–165; Mehmet İpşirli, “Medrese: Osmanlı Dönemi,” in *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, vol. 28 (Ankara: Türkiye Diyanet Vakfı, 2003), 331. For similar practices in Yemen, see Brinkley Messick, *The Calligraphic State:*

These institutions radiated hegemonic temporal order, and structured everyday life in line with it. Indeed, the prayer cycle has become a kind of a public clock and the prayer names were used to denote the different times of the day. The expression *vakt-i zuhr*, for example, which literally means noontime, could signify the time of the midday prayer itself, or more generally, the interval in which it was to be performed. Military codes from the second quarter of the nineteenth century still included expressions such as *yatsı nöbeti*, which means the night-prayer shift, or simply, the night shift.¹² The name of the fourth daily prayer, *ikindi*, is still used in present-day Turkish to signify the hours of mid-afternoon.

Eighteenth century chronicles reveal that the prayer cycle was used not only as a mechanism for regulating daily routines in institutions and organizations, but also for locating events in time. Indeed, it appears that before the second half of that century, people of different social standing throughout the Ottoman domains rarely referred to the time within the day in terms of specific hours.¹³ To give just one example out of many, one of the Ottoman chroniclers writes that the fire that broke out in Azapkapı on the seventieth day of *Muharrem* 1127 (23 January 1715), began at sometime between the noon and the afternoon prayers.¹⁴

As the eighteenth century progressed, however, the use of clock hours to indicate time became more common. For example, decrees issued in the last decades of the eighteenth century, subjected work in the offices of the central administration to the clock. Increasing use of clock hours is also evident in eighteenth-century chronicles.¹⁵ Different sources show that this trend intensified in the first half of the nine-

Textual Domination and History in a Muslim Society (Berkeley: University of California Press, 1993), 83. For a comprehensive account of time organization in early-modern Ottoman teaching institutions, see Avner Wishnitzer, "Teaching Time : Schools , Schedules , and the Ottoman Pursuit of Progress," *New Perspectives on Turkey* 43, no. 43 (2010): 5–32. On libraries, see Birol, *Managing*, 37.

¹² *Hizmet-i Dahiliye ve Nizam ve Intizam-ı Askeriye* (date and place of publication unknown) Süleymaniye Kütüphanesi, Hüsrev Paşa Koleksiyonu, demir baş 807/15.

¹³ Dana Sajdi has analyzed in detail seven chronicles composed in the Levant during the 18th century by individuals she defines as 'commoners.' Her work shows that these chronicles rarely relied on hours to locate events in time. See Dana Sajdi, *Peripheral Visions: The Worlds and Worldviews of Commoner Chroniclers in the 18th Century Ottoman Levant* (PhD dissertation, Columbia University, 2002), 2–14, 37–44. This seems to have been the practice not only in the provinces, and not only among commoners. See for example the compilation of fire descriptions brought in Ergin, *Mecelle*, vol. 1, 1183–1227.

¹⁴ *Ibid.*, 1192.

¹⁵ For an example of office hours' regulation from the late 18th century, see Başbakanlık Osmanlı Arşivleri (hereafter – BOA), C.DH 4027, 1201.Ra.8 (28.12.1786). References to hours in the fire descriptions brought by Ergin are significantly more frequent in the second half of the 18th century, when compared to the second half of the 17th century. See Ergin, *Mecelle-iUmûr-ıBelediyye*, vol. 1, 1183–1227. For a discussion of these figures and their significance, see Wishnitzer, *The Transformation*, 60–62. This evidence contradicts Tanyeli's claim that there was no real use for the *alaturka* system before the second half of the 19th century. See Tanyeli, "The Emergence," 162.

teenth century, with the use of clock hours spreading beyond government, or even elite circles. For example, in a set of reports, known as *havadis jurnalları*, which were compiled for the authorities in the early 1840s by a network of agents, exact hours were very often indicated.¹⁶ Interrogation protocols conducted by provincial criminal courts (*meclis-i tahkik*) around the same period likewise reflect clear awareness among those interrogated of the hour of the day or night. These people, who were usually of very modest standing, could nevertheless anchor their actions in time with some precision. While the recorded hours never included minutes, half hours were certainly noted.¹⁷

These changes were no doubt related to the growing availability of mechanical clocks during the period under discussion. The first mechanical clocks reached the Ottoman court already in the late fifteenth century, and during the sixteenth they were sold in ever growing numbers, gradually spreading beyond palace circles.¹⁸ It is quite safe to assume that by the second half of the eighteenth century, thousands of timepieces were marketed throughout the Ottoman domains every year.¹⁹ Prior to the late eighteenth century, it appears that clocks, set to 12:00 at sunset every day, were used to roughly indicate the seasonal hours described above. Discrepancy between these non-uniform hours, and the standard hours of the clock was not considered significant. This method of using clocks continued in some sectors and geographic areas

16 See for example all the reports included in BOA, İ.DH 84/4191. See also BOA, C.ZB 556; BOA, C.ZB 315; BOA, İ.DH 38/1802, 8; BOA, İ.DH 26/1232, 9. On the *havadis jurnalları*, see Cengiz Kırılı, “Coffee-houses: Public Opinion in the Nineteenth Century Ottoman Empire,” in *Public Islam and the Common Good*, eds. Armando Salvatore and Dale F. Eickelman (Leiden: Brill, 2006), 75–80.

17 See for example BOA, İ.MVL 245/8884. For further information regarding these protocols, see Omri Paz, *Crime, Criminals, and the Ottoman State: Western Anatolia between the Late 1830's and Late 1860s* (PhD dissertation, Tel Aviv University, 2011).

18 Otto Kurz, *European Clocks and Watches in the Near East* (Leiden: Brill, 1975), 20–46. Özdemir, *Ottoman Clocks and Watches*, 145. On the clock collection in the Ottoman palace, see Fanny Davis, “The Clocks and Watches of the Topkapi Palace Museum,” *Journal of Turkish Studies*, 8(1984): 41–51. On the diffusion of clocks and local manufacture during the 16th and 17th centuries, see Kurz, *European Clocks*, 55–60; Göçek, *East Encounters West*, 104–107; Özdemir, *Ottoman Clocks*, 111–125.

19 For estimations of numbers of clocks sold in the Ottoman Empire, see Kurz, *European Clocks*, 71–88. Ottoman sources too suggest the proliferation of clocks and watches in the eighteenth century, both in Istanbul, and in the provinces. See: Fatma Müge Göçek, *Rise of the Bourgeoisie, Demise of the Empire: Ottoman Westernization and Social Change* (Oxford: Oxford University Press, 1996), 103–106; Tanyeli, “Norms of Domestic Comfort,” 314–315; Tsameret Levi-Dafni, *A Social History of Diyarbakır in the Eighteenth Century* (PhD. dissertation, Tel Aviv University, in progress). See also Ekmeleddin İhsanoğlu, “Some Remarks on Ottoman Sciences and its Relation with European Science & Technology,” in *Science, Technology and Learning in the Ottoman Empire*, ed. Ekmeleddin İhsanoğlu (Hampshire: Variorum, 2004), 57.

well into the nineteenth century.²⁰ However, at least in the bigger cities, the increased use of clocks apparently led to the spread of a unique Ottoman system of equal hours that was hitherto largely limited to professional circles of astronomers and *muvakkits* (Islamic time-keepers, see below).

Indeed, Ottoman astronomers were long familiar with equal hours. Tables of prayer and fasting times compiled by Ottoman astronomers since at least the fifteen century often specified equal hours (that is, equinoctial hours), alongside the temporal hours.²¹ According to this scheme, two sets of twelve equal hours were counted from sunset, which was reckoned as 12 o'clock, until sunset the following day.²² Since the length of the day changes constantly throughout the year, there was a need to adjust all clocks and watches to show 12 every day at sunset. This wore down their mechanisms frequently and made it virtually impossible to keep clocks in agreement with one another.²³

On the other hand, the system maintained some correlation with the older system of temporal hours, and the Islamic prayer cycle. In any case, it was this system of equal hours, rather than the one of seasonal hours, that came to be known in the nineteenth century as *gurubi* or *alaturkasaat*, and it was to this system that the notice in the *Takvim-i Vekayi* referred to.²⁴ That is important since the existing scholarship is not always clear about the use of temporal and equal hours in the Ottoman Empire and the emerging picture is somewhat confused. Having cleared away the confusion, we can now establish safely that the hour eleven mentioned in that notice meant one clock-hour before sunset. Establishing the exact hour of sunset, in turn, was the role of the *muvakkit*.

²⁰ See for example R. Walsh, *A Residence at Constantinople during a Period including the Commencement, Progress and Termination of the Greek and Turkish Revolutions*, vol. 2 (London: Frederick Westley and A. H. Davis, 1836), 482–483.

²¹ Equinoctial hours were of course known already in antiquity, and were used in tables of prayer time before the Ottoman era. See King, *In Synchrony*, vol. 1, 201–208, 553. See also Idem., “Astronomical Timekeeping in Ottoman Turkey,” in *Islamic Mathematical Astronomy*, 2nd ed. (Aldershot: Variorum, 1993), 246–252.

²² İhsanoğlu and Günergun, “Osmanlı Türkiyesinde,” 436; Atabaki, “Time, Labour-Discipline,” 6; Bir, “Zamanı Belirlemeye yarayan Aletleri,” 231–235. Tanyeli, “The Emergence,” 162. See also Ekmel-eddin İhsanoğlu, “Modernization Efforts in Science, Technology and Industry in the Ottoman Empire (18–19th centuries),” in *Science, Technology and Learning in the Ottoman Empire* (Aldershot: Ashgate/Variorum, 2004), 56.

²³ Thomas Thornton, *The Present State of Turkey*, vol. 1, 72–73; White, *Three Years*, vol. 1, 31; S. M. Zwemer, “The Clock, the Calendar and the Koran,” *The Moslem World*, 3(1913): 272. The implication of this scheme on standards of punctuality is further discussed below.

²⁴ For a good contemporary explanation of the Ottoman system, see White, *Three Years*, vol. 1, 31. Foran elaborate discussion of the cultural and political significance of the term *alaturkasaat*, see Wishnizter, “Our Time.”

8.3 Synchronizing Clocks with the Heavens

Already during the first centuries of Islam, methods were devised in order to establish the times of the five daily prayers with some precision. The legal scholars of medieval Islam advocated simple methods of folk astronomy for determining prayer times, methods which required no mathematical knowledge or complex devices. Muslim astronomers, however, gradually developed a vast body of knowledge known in medieval Arabic as *‘ilm al-miḡāt*, literally, the science of determining time. Scholars who specialized in this discipline engaged in astronomic observations and mathematical calculations in an attempt to establish time - most notably prayer and fast times - with utmost precision.²⁵ It was probably during the Mamluk period (1250–1517) that larger mosques in Egypt began to employ *muwaqqits*, or scholars versed in *‘ilm al-miḡāt*, in order to calculate prayer and fast times and perform other related duties. That practice spread quickly throughout the Muslim world and it was in this well-established form that it was adopted by the Ottomans.²⁶

Muvakkits, as they were called in Ottoman-Turkish, were employed in larger Ottoman mosques from the early days of the empire.²⁷ The astronomical calculations of these times depended on observing celestial bodies. The *muvakkit* was thus in charge of maintaining what David King called “synchrony with the heavens.” The *muvakkits* throughout the Ottoman Empire operated under the authority of the chief astrologer (*Müneccimbaşı*) of the imperial court. Moreover, the *muvakkithanes*, or time-keeper lodges, were built by sultans and high officials, and served to advertise their power, piety and benevolence.²⁸ The traditional mode of time reckoning was thus not only in synchrony with the heavens, but also with the more easily identifiable power structure on earth. The function fulfilled by the *muvakkits* on the religious, political and practical levels contributed to the longevity of the institution. Indeed, the *muvakkits* did not disappear even when mechanical clocks became more widespread. Since the *alaturka* hour system still relied on observing celestial bodies,

²⁵ On the definitions of prayer times in early Islam, see David King, *Astronomy in the Service of Islam* (London: Variorum, 1993), 250–251; Idem, *In synchrony*, vol. 1, 201–202, 633–634, 654–659; Zwemer, “The Clock,” 272.

²⁶ King, *In Synchrony*, 643–645. On the roles of the *muvakkit* in the Ottoman Empire, see Süheyl Ünver, “Osmanlı Türkleri İlim Tarihinde Muvakkithaneler,” in *Atatürk Konferansları V, 1971–1972* (Ankara: Türk Tarih Kurumu, 1975), 217–257; Salim Aydüz, “İstanbul’da Zamanın Nabzını Tutan Mekekanlar: Muvakkithaneler,” *İstanbul*, 51(2004): 92–97; Idem, “Osmanlı Devleti’nde Müneccimbaşılık,” in *Osmanlı Bilimi Araştırmaları*, vol. 1, ed. Feza Günergun (İstanbul: İstanbul Üniversitesi Edebiyat Fakültesi, 1995), 188–190.

²⁷ Özdemir, *Ottoman Clocks*, 29–33.

²⁸ On the authority of the *müneccimbaşı*, see Aydüz, “Osmanlı Devleti’nde,” 188–190. On the construction of *muvakkithanes* by sultans and state officials, see Ünver, “Osmanlı Türkleri,” 234–254.

the importance of the *muvačkits* in fact increased with the widening use of clocks, and the numbers of *muvačkithanes* rose accordingly.²⁹

During the nineteenth century, it became customary to set one's watch according to those at the *muvačkithane*. The famous Turkish writer Ahmet Hamdi Tanpınar (1901–1962) has left us a vivid description of that practice:

There were *muvačkithanes* at every step. However much in a hurry people were, they would halt in front of the *muvačkithane* windows, and pronouncing the *besmele*, take out their watches of all shapes and sizes, depending on their wealth, their age and their stature...and proceed to adjust and set it, with a prayer that the time it measured be auspicious for themselves and for their families. Then they would hold it to their ears as if listening to good news of near and distant times....It had unique qualities extending in both dimensions of life. On the one hand it guided one's present and one's duties, and on the other opened the pure and faultless roads to the eternal happiness one sought.³⁰

Tanpınar's text demonstrates the crucial role played by *muvačkits* in the interface between the natural rhythms and the socio-temporal order, between religious and social life. In fact, it was the inseparability of these realms that the *muvačkıt* reflected more than anything else.

8.4 When Night Falls

Let us now return to the notice in the *Takvim-i Vekayi*. We already know that eleven o'clock means one hour before sunset, or one hour before the evening *ezan*. What may still be in need of clarification is that this time of the day had a special significance in Ottoman temporal culture. In contrast to artificially-lit societies, in Ottoman temporal culture the social day and night were more directly related to daylight and darkness, and the two intervals were clearly distinguished from each other on a number of levels which seem to have reinforced each other. Sunset marked the end of the daily cycle of religious worship, of the round of clock hours, and the conclusion of the calendar day.

Nightfall was therefore a time of closure, and that, not only on some symbolic or metaphoric level. Walled cities all over the empire locked their gates at sunset, and

²⁹ On the number of *muvačkithanes* in Istanbul, see Ünver, "Osmanlı Türkleri," 234–254. Ünver lists a total of 69 *muvačkithanes* in Istanbul, but only 39 can be dated with some certainty (it has to be remembered that many *muvačkithanes* were built long after the mosque they served had been completed.) Out of these 39, only 5 were built between the 15th and the end of the 17th centuries. The 18th century alone boasts 7 *muvačkithanes*, and the 19th century, 27. Even if we take into consideration that the more recent buildings are un-proportionately represented, as they are easier to date, the increase in the number of *muvačkithane* is still impressive.

³⁰ Ahmet Hamdi Tanpınar, *Saatleri Ayarlama Enstitüsü* (İstanbul: Dergâh Yayınları, 2008, (first serialized 1954)), 24. This English translation is taken from Özdemir, *Ottoman Clocks*, 145.

kept them closed and guarded until daybreak.³¹ The gates of roofed bazaars, quarters, neighborhoods, alleys, and courtyards were shut down at the same time.³² *Medreses* and bachelors' inns, traditionally considered a threat to public order, were also closed down at sunset and kept locked over night.³³ The urban fabric was thus compartmented by countless doors and gates. Clearly, this closure did not happen all at once, just as the sun does not turn off its light as if it were electricity. The period around sunset was twilight time, natural but also social, a liminal interval separating two periods which were clearly distinguished from one another in terms of the codes of normative behavior associated with each. The call for the night prayer signaled the end of this twilight time and the almost complete evacuation of the streets.³⁴

As noted, social life did not die out with sunset and, yet, its volume decreased significantly and whatever interaction continued was largely limited to the confines of private domiciles, gardens, and neighborhood coffee-houses.³⁵ The dark streets

31 See for example Eyal Ginio, *Marginal People in the Ottoman City: the Case of Salonica during the 18th Century* (in Hebrew) (PhD. Dissertation, Hebrew University of Jerusalem, 1998), 94; Miriam Hoexter, *Communal and Professional Groups in Algiers in the 18th and 19th Centuries – Their Organization, their Functioning and the Policy of the Turkish and French Governments towards Them* (in Hebrew), (PhD. Dissertation, The Hebrew University, 1979), 10; Rıza Nur, *Hayat ve Hatıratım* (Istanbul: İşaret Yayınları, 1992), vol. I, 92; Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989), 279; Amnon Cohen, *Economic Life in Ottoman Jerusalem* (Cambridge: Cambridge University Press, 1989), 2. ‘Arif al-‘Arif, *Al-Mufaṣṣal fi Tārīkh al-Quds* (Jerusalem: Maṭba‘at al-Ma‘ārif, 1961), 303; Jens Hanssen, *Fin de Siècle Beirut: The Making of an Ottoman Provincial Capital* (Oxford: Clarendon Press, 2005), 199.

32 For the shutting down of shops and roofed bazaars in Bulgarian cities, see Raina Gavrilova, *Bulgarian Urban Culture in the Eighteenth and Nineteenth Centuries* (Selinsgrove: Susquehanna University Press, 1999), 90; Marcus, *The Middle East*, 284; Hanssen, *Fin de Siècle Beirut*, 197–198; Ehud R. Toledano, *As If Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven: Yale University Press, 2007), 172–173.

33 Bruce McGowan, “The Age of Ayans, 1699–1812,” in *An Economic and Social History of the Ottoman Empire*, vol. 2, eds. Halil İnalcık and Donald Quataert (Cambridge: Cambridge University Press, 1997), 647; Mübahat Küçükoglu, “Life in the *Medrese*,” in Faroqui and Neumann, *The Illuminated Table*, 216–217.

34 Contemporary and later writers, both local and foreign, emphasized the complete darkness and silence that took over Ottoman cities at night, some specifically arguing that nobody went outside during the dark hours. See for example James Caulfeild, *The Travels of Lord Charlemont in Greece & Turkey, 1749*, eds. W.B. Stanford & E. J. Finopoulos (London: Trigraph for the A.G. Leventis Foundation, 1984), 210; Ignatius Mouradgea D’Ohsson, *Tableau Général De L’empire Othoman*, vol. 4 (Paris: Didot Pere et Fils, 1824), p. 241.

35 For discussions of nocturnal sociability, see Avner Wishnitzer, “Into the Dark: Power, Light and Nocturnal Life in 18th-Century Istanbul,” *International Journal of Middle East Studies* 46, no. 3 (2014): 513–531; Cemal Kafadar, “A History of Coffee,” a paper given at the *13th Economic History Congress XIII* (Buenos Aires, 2002), 58–59; Tülün Değirmenci, “Bir Kitabı Kaç Kişi Okur? Osmanlı’da Okurlar Ve Okuma Biçimleri Üzerine Bazı Gözlemler,” *Tarih Ve Toplum, Yeni Yaklaşımlar* 13 (2011): 26; Zehra Öztürk, “Osmanlı Döneminde Kiraat Meclislerinde Okunan Halk Kitapları,” *Türkiye Araştırmaları Liter-*

remained the domain of robbers and ghosts, of gamblers, drinkers and sinners of all kinds. Anybody wandering out in the dark streets without a lantern would immediately be considered a suspect and risk being arrested, and having his reputation tarnished, of course. For women, sunset represented a clear temporal boundary, rather than a frontier zone. Any woman crossing that boundary jeopardized her own honor (*ırz*), and that of her family.³⁶ These practices and conventions were embedded in contemporary mechanisms of urban control, an issue I shall not develop here.³⁷

Instead, let us return to our notice in the *Takvim-i Vekayi*. The steamer mentioned in it was scheduled to depart so as to allow the officials to arrive at their homes before sunset or shortly after nightfall, as would befit respectable members of the community. In other words, the departure hour of the ferry was not incidental. Throughout the nineteenth century the workday in governmental bureaus ended around one hour before sunset, and the departure times of the ferries were fixed accordingly.³⁸

8.5 How Approximate is “Approximately?”

Now that we understand when the steamer was scheduled to leave, and why it was scheduled to leave at that time we may deal with the most complex issue, that is, what does “approximately” mean in “approximately eleven o’clock?” It is important to note that use of such vague time definitions was not peculiar to the *Takvim-i Vekayi* notice here discussed. For example, a note sent to some of the cabinet members in late July 1857, informed them that a certain meeting was to take place on Friday, “around eight o’clock” (*saat sekiz radelerinde*).³⁹ The working hours of government officials were similarly fixed in a rather lax manner. Many of the decrees issued in order to define the length of the workday in the early nineteenth century ordered the clerks to report in their bureaus at 2:30–3:00 or 3:30–4:00 (*alaturka*), for example.⁴⁰

tür Dergisi 5, no. 9 (2007): 404. Some of the gatherings described in these works, but not all of them, clearly took place during Ramadan. See also Özge Öztekin, *Divanlardan Yansıyan Görüntüler: XVIII. Yüzyıl Divan Şiirinde Toplumsal Hayatın İzleri* (Ankara: Ürün Yayınları, 2006), 380–381, and Ralph Hattox, *Coffee and Coffeeshouses: the Origins of a Social Beverage in the Medieval Near East* (Seattle: University of Washington Press, 1985), 128.

36 Raphaela Lewis, *Everyday Life in Ottoman Turkey* (London: B. T. Batsford, 1971), 115.

37 For an elaborate discussion of the organization of nighttime in Ottoman temporal culture, see Wishnitzer, *The Transformation*, 65–85.

38 See for example BOA, A.MKT.NZD 169/47, 22.S.1272 (8.11.1855); BOA, DH.MUİ 103–2/23, 28.Ş.1328 (28.8.1910); BOA, MV. 143/23, 22 Mayıs 1326 (5.6.1910); BOA, DH.İD 130/8, 2 Şubat 1330 (15.2.1915). For a table summarizing some thirty decrees concerning office hours in governmental bureaus, see Wishnitzer, *The Transformation*, 111.

39 BOA, A.MKT.NZD 230/38, 1273/25.7.1857.

40 See for example BOA, C.DH 3421, 1230/1815.

While in theory the Ottoman hour system could be just as precise as the mean time system, in actuality, the need to set all clocks and watches on a daily basis necessarily created inconsistencies. It is not hard to imagine how gaps between different timepieces opened up quickly, if, for any reason, they were not set on time for a few days.⁴¹ As one contemporary observer noted, “there is a daily alteration of a few minutes and this makes it extremely difficult to keep your watch right and not to be too late or too early for everything. No two clocks or watches in the whole town are, I believe, exactly alike”.⁴² Refraining from fixing an exact hour was thus closely related to the unpunctuality of Ottoman time reckoning systems. Now, however, I wish to further argue that Ottoman temporal culture allowed wider margins even when hours were pre-fixed in an exact manner. In other words, the matter was related not only to the time reckoning system, but also to a host of conventions associated with time and its social organization.

It has been suggested that prior to the spread of modern clock time and schedules, punctuality and belatedness could not be clearly determined. It was only the standard set by the clock and the schedule that could define a delay as a delay.⁴³ This statement seems to draw on a rather clear-cut binary between a modern, clock-based time consciousness and earlier modes of time notation. However, Ottoman temporal culture problematizes such binaries. To start with, the very notion of punctuality is not necessarily dependent on clocks. As noted above, the calculation of prayer and fast times was the most important task of the *muvaḳḳit*, and lateness could be easily measured against these times.⁴⁴ Mechanical clocks too were set according to the exact time of sunset, as determined by the calculations of the *muvaḳḳits*. The punctuality of a clock, in turn, would be assessed not by its ability to keep steady movement for the longest possible duration, but rather, by the extent to which it was tuned to

⁴¹ The discrepancies between timepieces were noted by many European observers. For examples, see Edwin Pears, *Forty Years in Constantinople: the Recollections of Sir Edwin Pears, 1873- 1915* (New York: D. Appleton & Co., 1916), 312–313; Theophile Gautier, *Constantinople*, trans. R. H. Gould (American edition, specially revised) (New York: Henry Holt & Co., 1875), 272; Fraser, *Pictures from the Balkans*, 119–120.

⁴² Brassey, *Sunshine and Storm in the East or Crusies to Cyprus and Constantinople* (London: Longmans, Green and Co., 1880), 72. See also Fraser, *Pictures from the Balkans*, 119–120. Ottoman writers too commented on the difficulties of the *gürubî* system. See Hassan Hamid, “Şemsi Tarih, Zevalî Saat,” *Mülkiye*, 2 (1 Mart 1325/1909), 25–29; Ahmet Samim, “Vaktimizi Bilelim,” *Sada-ı Millet*, 111 (21 March, 1910): 1–5. Attempts to reconcile the old practice of temporal hours with the standard hours of mechanical clocks were characteristic of the early stages of dissemination of clocks in Europe too. See Rossum, *History of the Hour*, 113–117.

⁴³ Barak, *On Time*, 53–54.

⁴⁴ Prayers were to be performed within specified intervals, rather than on given times. The dividing lines between these intervals nevertheless had to be precisely determined and were the object of much scholarly discussion. Precision was required in the designation of diurnal prayers, less so in nocturnal ones. See C. Pellat, “Layl and Nahâr.” *EP*, vol. 5, 709.

the sun's daily cycle.⁴⁵ In this, the Ottomans were not very different from their contemporaries in Germany or in the American South.⁴⁶ In short, while the mechanical clock was certainly a simpler arbitrator of punctuality and lateness, it did not create these notions.

Second, the use of clocks and schedules did not necessarily bring about punctuality and a delay was still measured against a set of social conventions, rather than against the hands of the clock. The margins of a pre-fixed time, whether designated in astronomical terms (as in prayer times), or in terms of clock hours, were determined by the context. Indeed, being on time, just like being late, are very relative terms in any society and may differ significantly according to social contexts and the status of the individuals involved.

Whereas prayer and fast times were sanctified and their margins were kept narrow by religious dictums, designated times in other fields of social life were usually kept with much wider margins. This was true whether the designated time referred to the prayer cycle ("the ferry will depart following the afternoon prayer"), or to clock hours ("the ferry will depart at approximately eleven o'clock"). With only one government-owned ferry going up and down the Bosphorus, such a definition was probably good enough. Put more broadly, as long as social life in Ottoman cities remained localized, and division of labor relatively simple, these standards of punctuality did not present any problem.⁴⁷ But in the second half of the nineteenth century, things began to change rather dramatically.

8.6 The Transformation of Ottoman Temporal Culture

As already suggested, any temporal culture is a historically created entity, that is to say, it is embedded in specific economic, social, political and cultural structures and may very well take a new form as those structures change over time. That was exactly the nature of the process that unfolded over the long nineteenth century. Starting already at the late eighteenth century, various organs of the reforming Ottoman state began experimenting with new techniques of time organization. In an attempt to attain better surveillance capabilities, and higher levels of regularity, efficiency, and predictability, these organs gradually developed elaborate "temporal constructs" in which clocks

⁴⁵ It seems that still in the early 20th century there remained a measure of ambiguity with regard to what defines the punctuality of a clock. See "Al-sā'āt al-Maḍbūṭa," *Muqtataf*, 32(1907), 78.

⁴⁶ Sauter, "Clockwatchers and Stargazers," 694. Michael O'Malley, "Time, Work and Task Orientation: A Critique of American Historiography," *Time and Society* 1/3 (1992): 352–354.

⁴⁷ On the localized nature of social life in early modern Ottoman cities, see Marcus, *The Middle East*, 285–290; Cem Behar, *A Neighborhood in Ottoman Istanbul: Fruit Vendors and Civil Servants in the Kasaplıyas Mahalle* (Albany: State University of New York Press, 2003), 3–6.

played an increasingly important role.⁴⁸ The term “temporal constructs,” is here used to denote comprehensive ensembles of time-related practices and procedures that govern the work routines in complex organizations. In the nineteenth century Ottoman Empire, the emergence of such constructs was most clearly evident in the administrative system, in the post-1826 army, and later on, in the education system. Similar constructs were also devised for systems of transportation and communication, and in various foreign commercial firms operating in the Ottoman domains.

The reforms, which began on the organizational level, gradually diffused beyond clearly delineated state-spaces such as bureaus, military compounds, and schools, and eventually led to a more comprehensive change in time-related behaviors, conventions, and values. But this was by no means a smooth process. The temporal arrangements devised in order to meet the new needs often disturbed the inner coherence of early modern temporal culture and created a sense of friction that was aggravated by the gradual spread of European mean time in the second half of the nineteenth century.⁴⁹

8.7 Conclusion

By the end of the eighteenth century timepieces were no longer merely ornamental objects. They were increasingly consulted for temporal orientation but were still very far from becoming the supreme regulators of social life. That role was still reserved for the heavenly bodies, the revolution of which determined prayer times and paced mechanical clocks. Thus, while clocks were without doubt more commonly used, the time they measured was not severed from the natural world, nor was it emptied from the multiplicity of political, religious, and cultural meaning it carried. The Ottoman “clock-time” of the late eighteenth century was indeed very different from the uniform and empty physical entity which is usually meant by the term.

Reading the clock *alaturka*, within the wider context of contemporary temporal culture sharpens our awareness of the myriad of alternative modernizations that would have seemed possible to the contemporaries before the European model of modernity secured its dominance, before the *alafranga* reading of the clock became the only possible one. Indeed, the days of time definitions like “at approximately eleven o’clock,” were numbered. To the rising professional elites of the early-twentieth century, the world of temporal conventions in which the *alaturka* system was grounded, in itself a product of modernization, would soon be seen as the remains of traditional order.

⁴⁸ For this process see Wishnitzer, *Reading Clocks, Alla Turca*.

⁴⁹ On the transition to mean time, see Avner Wishnitzer, “Our Time.” See also: İhsanoğlu and Güneş, “Osmanlı Türkiyesinde,” 434–441; Gündüz, “Alaturka Saatten,” 120–126.

Liat Kozma

9 How to Work on Social History in the Egyptian Archives: Some Thoughts

On 15 February 1874, 37-year old Ya^cqub Jalula, a Tunisian Jew, shot himself to death. When the police arrived, they found him on his bedroom floor, the revolver lying on his pillow. On the bedroom table they found four letters, two in Hebrew and two in French. One of the Hebrew letters was addressed to his wife, ^cAziza bint Shalom, and the other to a friend of his, one Monsieur Samama. The letters in French were addressed to Jalula's foreign debtors.¹

This case, which I found in the Egyptian National Archives in the fall of 2003, has fascinated me ever since, and I never was quite sure why. This chapter attempts to explain this fascination by addressing a larger question, namely the allure of the archives. Taking this case as a point of departure, this essay attempts to reconcile the elusive appeal of the archives with the tedium of archival work: the mundane work of clerks recording police and court proceedings (writing down, deleting, editing, translating, throwing away, putting in storage); the mundane work of archivists (cataloguing, taking out of storage, returning to the right [or wrong] shelf, urging you to finish fifteen minutes before closing time); the mundane work of historians (sifting through pages, clearing the dust, taking notes, going on fieldwork, returning from fieldwork). In Carolyn Steedman's words, archival work is the fear that you will never be done, that it costs you too much, that there will be something left unread, unnoted, untranscribed; the historian's body breathing in the dust, his/her eyes burning, s/he is bent over, cold, sick.²

In what follows, I ask why such a case would reach the Egyptian legal system, and then why and how his suicide notes would be put on record. I am here exploring new kind of state, and a new kind of bureaucracy, which accumulated knowledge, was interested in order, and textualized this knowledge in unprecedented ways. Our reading of the texts, then, is mediated by the state, in at least three moments: the state which recorded, the state which created the central archives, and the state which allowed us access to its archives.

¹ *Majlis al-Ahkam*, S/7/10/113, case no. 9, p. 28, 12 Muharram 1295 (27 January 1877).

² Carolyn Steedman, "Something She Called a Fever: Michelet, Derrida, and Dust," *American Historical Review* 106 (2001): 1165, 1172; Thomas Osborne, "The Ordinarity of the Archive," *History of the Human Sciences* 12 (1999): 51–64.

9.1 Death in Alexandria

*November 2003. I find the story of Jalula's suicide. It has nothing to do with my research. I am allowed two sijjils per day, that's the only interesting thing I found today. I ask Hanan. She says that since I have nothing more interesting to do, I might as well. I hand-copy it.*³

Upon arrival at the crime scene, the police interrogated the widow. She told them that the deceased had immigrated to Alexandria from his country, 13 years prior, to make a living as a merchant. The previous night, he came home, had dinner with her, and then took her to a different neighborhood, near the train station, to a fellow Jewish merchant named Haim. He left her there and told her not to leave until he came for her. When he did not show up, she decided to spend the night at their friends', and in the morning, she went back home with Haim. She found her home locked from the inside and had to call in a carpenter to break the door. When she entered, she found her husband dead.

When questioned about the letter, she told the police that the deceased asked for her forgiveness, emphasized that he indeed killed himself, and accused no one for his death, since what had happened to him was the will of God (*bi-l-qada' wa-l-qadr*). She therefore does not blame anyone for her husband's death, she suspects no one, and she does not wish to press charges against anyone. His closest relatives were his brothers, living in Tunis. The Hebrew letters and the weapon were then sent to the police station.

The letters were translated from Hebrew to French and then to Arabic. In the letter to his wife, Ya'qub Jalula bid her farewell. He explained that he had been trying very hard to improve his financial condition, but to no avail. Even rabbinical blessings did not help him, he added, maybe because he was not strict enough in performing his religious duties. Every day was worse than the day before, and he lost all hope for improvement. Jalula then asked for his wife's forgiveness for his sudden departure and for the hardship she would suffer as a result, but also requested that she put her faith in the Creator. He then gave her permission to marry a respectable man after his death, if his own brother will not marry her. In his letter to Monsieur Samama, he told her, he ordered him to sell all his pawned objects and if possible, give her what is left, so that she would not be left totally empty-handed. Jalula concluded by saying that she should not worry about herself, since he still worried about her, even though he was already dead.

³ Indeed, the role of serendipity in our research work is often overlooked in our heroic narratives of archival research. Maybe it should be kept that way. See Gesa E. Kirsch and Liz Rohan, "Introduction: The Role of Serendipity, Family Connections, and Cultural Memory in Historical Research," in *Beyond the Archives: Research as a Lived Process*, eds. Kirsch and Rohan (Carbondale: Southern Illinois University Press, 2008), 1–9.

The letter to Monsieur Samama opens by stating that it was his last hour. Jalula wished him all the best and asked him to sell all his pawned objects, and give what was left from the sale to his wife, since he left her not even a dirham. He expressed the hope that enough money will be procured to enable her to travel back to Tunis with her brother. He asked his friend to forgive him for both the past and the future, as “there is nothing honorable in suicide”. Like his letter to his wife, here again Jalula explained how hard he had tried to improve his finances but failed.

The police concluded that it was indeed suicide, in the *Shari’a* court his wife testified that she pressed charges against no one. It was also found that his legal heirs, his brothers and mother, were in Tunis. The court concluded that it was indeed suicide due to economic hardship, and that there was no crime involved.⁴

For historians of nineteenth century Alexandria and, particularly, its Jewish community, this is a fascinating document. It tells a story radically different from the ways in which cosmopolitan Alexandria is narrated. Over the course of the nineteenth century, due to Egypt’s governors’ industrial and maritime enterprises, Alexandria experienced unprecedented growth, growing from about 25,000 inhabitants in 1825 to 232,000 in 1882. Both internal and international migrants began inhabiting newly-established neighborhoods outside the old city walls. Most of them came from Delta villages to populate Alexandria’s new slums, whereas a small minority of Europeans moved to the renovated quarters.⁵ The European inhabitants of Alexandria, and particularly their elite, have been the focus of most academic and popular writing about Alexandria of the late nineteenth and early twentieth centuries.

Cosmopolitan Alexandria is a place that foreigners migrated to in the hope of making a fortune. They spent their time in European cafés, theatres, department stores, and music halls. From this portrayal of Alexandria, the non-elite and local Egyptians are explicitly absent, and when they are not, they are usually described in terms of filth and bad smell. The history of late nineteenth century Alexandria’s Jewish community, moreover, is often restricted to the highest echelons of society—those who spoke only French and interacted only with other foreigners and with members of Egyptian elites. To study how Egyptians of different communities experienced their city, argues Khaled Fahmy, Arabic sources should be consulted, which would portray non-elite quotidian dimensions of the city’s history. Indeed, the history of Alexandria’s non-elite has been the focus of recent scholarship.⁶

4 *Majlis al-Ahkam*, S/7/10/113, case no. 9, p. 28, 12 Muharram 1295 (27 January 1877).

5 ‘Ali Mubarak, *al-Khitat al-Tawfiqiyya al-Jadida li-Misr al-Qahira wa-Muduniha wa-Biladiha al-Qadima wa-l-Shahira* (Cairo: al-Matba‘ah al-Kubra al-Amiriyya, 1304–1306 [1886–89]), 7: 65; Michael J. Reimer, *Colonial Bridgehead: Government and Society in Alexandria, 1807–1882* (Boulder: Westview Press, 1997), 89–96; Gabriel Baer, “The Beginning of Urbanization,” in his *Studies in the Social History of Modern Egypt* (Chicago: University of Chicago Press, 1969), 137–138.

6 Khaled Fahmy, “For Cavafy, with Love and Squalor: Some Critical Notes on the History and Historiography of Modern Alexandria”, and “Towards a Social History of Modern Alexandria,” in *Alexan-*

Ya'qub Jalula was clearly a lower class merchant. He left Tunis in 1861 in search of economic opportunity. Moving to Alexandria at this particular moment, the beginning of Egypt's cotton boom, held such a promise of opportunity. The date of his immigration might not be coincidental. Legal reforms were enacted in Tunisia in 1861, which mandated legal equality between all subjects, regardless of their religion, and abolished the legal privileges of Muslims. These legal changes led to tensions between the Jewish community and its Muslim neighbors, leading some to flee Tunisia. Following public outcry, these legal changes were rescinded in 1864, which Jalula was no longer present to see.⁷

So, the story of late-nineteenth century Egypt, this case implies, can and should include stories of broken dreams, not only of great fortunes. In fact, Rabbi Rafa'el Ben Shimon, who was sent from Jerusalem to Alexandria and served as its rabbi about two decades later, notes suicide as an epidemic among Egyptian Jews. When he arrived to Egypt, he claims, its Jewish community was plagued with suicide, and people took their own life on the most minor pretexts. He ascribed this "trend" to European influence and loss of faith in the afterlife and decided to punish severely such persons by denying last communal respect to the dead. It was these deeds, he argued, which reduced the rates of suicides in the Jewish community in Egypt. Only those dying of terminal illness were exempt from the sanctions.⁸

Some of the terms and procedure described here are specific to Islamic or Jewish law. Jalula is noting the possibility that his brother might marry his wife, because it is the duty of a brother-in-law to the childless widow to marry her and beget a child, who would then be recognized as his brother's. The insistence of the police on finding the legal heirs of the deceased is related to the *Shari'a* procedure in cases of unnatural death: the legal heirs are the only ones entitled to initiate a legal procedure in cases of unnatural death, and a case cannot be closed without them. The widow's statement is not sufficient, and at least theoretically, the brother might come forth in the future and claim otherwise.⁹

Ya'qub Jalula's case is found in the records of Egypt's Supreme Council of Adjudication (*Majlis al-Ahkam*), the highest legal institution in an elaborate system established and consolidated in Egypt since the 1850s. This system supplemented the

dria, Real and Imagined, eds. Anthony Hirst and Michael Silk (Aldershot: Ashgate, 2004), 263–306; Will Hanley, "Foreignness and Localness in Alexandria, 1880–1914" (Unpublished Ph.D. dissertation, Princeton University, 2007); Shane Elizabeth Minkin, "In life as in Death: The Port, Foreign Charities, Hospitals and Cemeteries in Alexandria, Egypt, 1865–1914" (Unpublished Ph.D. dissertation, New York University, 2009).

⁷ Kenneth Perkins, *A History of Modern Tunisia* (Cambridge: Cambridge University Press, 2004), 20–27.

⁸ Refa'el Ben Shim'on, *Nahar Mitzrayim* (Jerusalem: Tuv Mitzrayim Institute, 1998), 304–306.

⁹ Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005), 49–50.

Shari'a courts, and together with the police station, helped maintain law and order. Usually, the police conducted an investigation at the scene of the crime (here – questioning the widow and having the letters translated). Then, the police would forward its report to the *Shari'a* court, which implemented *Shari'a* law. In our case, since no crime was committed, the court merely registered the widow's statement, and the fact that the other heirs of the deceased lived outside Egypt and thus could not be present in court. Finally, the case would come before the Council of Adjudication that, in this case, indeed confirmed the police findings.¹⁰

One question is why such a straightforward case would reach the Supreme Council, rather than be finalized at the police station. One answer is that Egypt was then in the process of centralizing state formation, in which cases of unnatural death were to be registered and thoroughly investigated. In the countryside, it was the *shaykhs'* legal duty to report unnatural deaths, and they could be punished for failing to do so. These processes also affected family and community dynamics. Midwives who did not report the birth of a child could be punished, as well as *shaykhs* who conducted marriage although they were not certified to do so. Unnatural death was to be investigated, and such cases were often forwarded to the Supreme Council for review – which manifested the control of the central authorities over the provinces.¹¹

This case is also interesting as a (mediated) first-person account of suicide. Suicide notes are not common in the archives before the twentieth century. As I explain below, many events and social phenomena went unrecorded for centuries, and suicide was one of these. Suicide was not relevant to any legal procedure and preserving such records would interest no one. Since non-elites had no access to writing (by 1880, only 4–5% of Egyptians were literate¹²), a first-person text written by a non-elite individual is very rare. Historians are often disappointed to find suicide notes, such as this one, to be incredibly mundane—often including no more than directions as to the disposal of personal belongings. Others may read suicide notes as an attempt to gain control over life that fell out of control: narrating a story of certitude in life that had none. Susan Morrissey reads suicide notes in police reports as a form of dialogue—shaping one meaning of their voluntary death, while police investigators are trying to assess the legitimacy of the act and its author.¹³

10 Khaled Fahmy, "The Police and the People in Nineteenth-Century Egypt," *Die Welt des Islams* 39 (1999): 341–377; Peters, *Crime and Punishment*, 133–141; Gabriel Baer, "Tanzimat in Egypt—the penal code," *Bulletin of the School of Oriental and African Studies* 26 (1963): 29–49.

11 Ehud R. Toledano, *State and Society in Mid-Nineteenth-Century Egypt* (Cambridge, UK: Cambridge University Press, 1990), 222–225; Fahmy, "The Police and the People", 350–351; Gabriel Baer, "The Village Shaykh, 1800–1950," in his *Studies in the Social History of Modern Egypt*, 38.

12 Juan Cole, *Colonialism and Revolution in the Middle East: Social and Cultural Origins of Egypt's 'Urabi movement* (Princeton, NJ: Princeton University Press, 1992), 115.

13 Susan K. Morrissey, *Suicide and the Body Politic in Imperial Russia* (Cambridge: Cambridge University Press, 2006), 149–150.

9.2 Histories of Archival Texts

The summers of 2001 and 2002 are recorded in notebooks: hand-copying police and court records. In the summer of 2003 the regulations have changed, only loose paper is allowed, to prevent theft of documents. My notes from 2003–2004 are written on loose paper.

Ann Stoler is apprehensive about the fact that historians concentrate nowadays on reading their sources against the grain, and hence can miss the regularities that make up the archives. Reading *along* the archival grain, we may find “logic of recall, densities and distributions, consistencies and misinformation, omission and mistake... Reading only against the grain of the colonial archive bypasses the power in the production of the archive itself”.¹⁴ Thus, in order to understand why a court record incorporated a suicide note, Ya‘qub Jalula must be set aside for a while, in favor of the new regularities of the modern Egyptian state.

Iris Agmon examined changing registration procedures in the *Shari’a* courts of Jaffa and Haifa in the late nineteenth century. The details we have and those we do not, the details included and those omitted, the protocols destroyed and those preserved are all an outcome of, and a testimony to, a changing state apparatus. Structure, literary expressions, legal terminology—all are related to changing ways in which the legal procedure was perceived: the clarity of handwriting or the amount of detail attest to a centralizing state which had to, and wished to, be able to review the decisions and decision making processes in the provinces.¹⁵ These concerns created more detailed documents, easier to read and more accessible than ever before, both to officials in Istanbul and to historians today.

Back in Egypt, beginning from the mid-nineteenth century, what would be committed to writing and what would not was in itself a part of state concern, the subject of government decrees. This process, in our case, was also related to a stricter regimentation of the public appearance of state bureaucrats—the length and style of their beards, the fez on their heads, where and when they were to smoke or drink coffee.¹⁶

An 1863 decree outlined registration procedures for court scribes, which might offer us a clue as to how these documents were produced, and what were the purposes they served. Scribes were instructed to mark and number clearly each case that the council discussed and each petition it received. The head of the council was instructed to review the notebooks on a weekly basis and to make sure that cases were

¹⁴ Ann Laura Stoler, “Colonial Archives and the Art of Governance: On the Content in the Form,” in *Archives, Documentation, and Institutions of Social Memory: Essays from The Sawyer Seminar*, eds. Francis X. Blouin Jr. and William G. Rosenberg (Ann Arbor: University of Michigan Press, 2007), 272.

¹⁵ Iris Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, NY: Syracuse University Press, 2006), 98–105.

¹⁶ Ehud R. Toledano, “Law, Practice, and Social Reality, Cairo 1854,” *Asian and African Studies* 17 (1983): 165–6; Toledano, *State and Society*, 99–100.

indeed being discussed in the order in which they were received. Lower courts were to submit bi-weekly reports to the Supreme Council, stating the cases that they were dealing with, the ones that were on hand, the ones that were delayed and the reason for that delay. Scribes could be punished for failing to keep this order.¹⁷

An 1865 decree, for example, ordered police officials not to record minor offenses or disputes unless one of the parties wished to have the settlement in writing. The same decree, moreover, instructed village *shaykhs* to resolve minor disputes on the spot, without troubling the district's administrator unless absolutely necessary.¹⁸ Here, official decrees clearly state that no recording is necessary, as no higher-ranking official would be likely to review minor cases, and yet recording was a meaningful tool in people's lives and life choices.

What I trace here is the changing role of archival records and changing patterns of textualization. Abraham Marcus and Dror Ze'evi, in their respective works on Aleppo and Jerusalem in the Ottoman period, observed that individuals sometimes turned to the authorities just to have a resolution or some fact put down in writing—so that minute details such as a girl's loss of virginity, or the sale of an animal, were recorded for future reference.¹⁹ Here, the purpose of recording is different. People still turned to the police and courts to have their disputes (and their settlement) placed on the books, but a centralizing state, as Egypt was becoming in the later decades of the century, had to be able to review decisions of lower courts and assert its authority over all branches of the administration.

9.3 Historians in the Archives

Tea breaks. After three hours of reading and hand copying, I have to take a break. I drink tea. I have never had tea before. Or caffeine for that matter. But it works. I drink tea and can work for two more hours.

September 2002. Braxton Hicks contractions. I am terrified. I gain the rare sympathy of the otherwise reserved archivist. Three days of bed rest. Not good. Not good at all. Three days of no research.²⁰

¹⁷ *La'iyat majlisa aqalim bahri wa-qibli*, articles 6, 7, 9, in Ahmad Fathi Zaghlul, *al-Muhama* (Cairo: Matba'at al-ma'arif, 1900), 97–98 (of appendixes).

¹⁸ Majlis Khususi, S/11/8/8, no. 28, 17 Jumada Thani 1282 (5 November 1865), 113–116, articles 1–4.

¹⁹ Dror Ze'evi, "The Use of Ottoman Shari'a Court Records as a Source for Middle Eastern Social History: A Reappraisal," *Islamic Law and Society* 5 (1998): 42–44, 50; Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989), 323–324.

²⁰ Here, with Steedman, I think of the aching body of the historian, reminded of her own materiality.

In the 1990s, anthropologists started treating their fieldwork, their main methodological tool, as an object of anthropological research: they inserted themselves into the narrative, looked for structural hierarchies, initiation rites, and cultural capital. They used terms such as inclusion and exclusion, center and periphery, to explain their own on-site positioning. Disciplines, they claimed, as much as villages and tribes (the traditional objects of anthropological research), invent traditions and canons, consecrating certain practices and delegitimizing others. Fieldwork, as socially constructed by the discipline, they argued, was a rite of passage for an anthropologist. Taking gender and race into account, they also demonstrated how their own professional codes perpetuate power relations within their own community. Fieldwork marks and polices the boundaries of the discipline.²¹

As an intellectual historian, Dominick LaCapra noted the hierarchical implications of archival research, and the fetish-like qualities of the archives for the profession. The significance of research is thus valorized according to the extent it uncovers hitherto unknown and unpublished information. The archival historian is presumably the one who does real work, while the intellectual historian is but “[a] relaxed parasite,” who does little more than “reshuffling books”. The archive is turned into a fetish, he argues, when it becomes a literal substitute for the reality of the past, a stand-in for the past that brings the mystified experience of the thing itself.²²

Historians of nineteenth-century Egypt have pride in their own mystification. “Untapped sources may bring to us the flavor of streets we never walked and people we never met,” Toledano wrote in 1983.²³ Juan Cole needed “documents on the lives of these ordinary persons,” and found himself fortunate enough to find them in the Egyptian National Archives: “This magnificent repository of evidence of the history of so complex a civilization as modern Egypt is a historian’s dream come true”.²⁴

Mine Ener is one historian who was not entirely oblivious of the archive around her: noting her conversations with other young researchers in the archives, she mentions that some documents were lost in a fire, and alludes to collections she could not access because they were not yet catalogued. She does, however, describe the archive as a “goldmine of materials”.²⁵ I see now that so did I, in the acknowledgements to my

21 Akhil Gupta and James Ferguson, “Discipline and Practice: ‘The Field’ as Site, Method and Location in Anthropology,” in *Anthropological Locations: Boundaries and Grounds of a Field Science*, eds. Gupta and Ferguson (Berkeley: University of California Press, 1997), 16–18; James Clifford, “Spatial Practices,” in *Anthropological Location*, 187–193.

22 Dominick LaCapra, *History and Criticism* (Ithaca: Cornell University Press, 1985), 92–93. For an earlier treatment of the “fetishism of documents,” see E.H. Carr, *What is History?* (London: The Macmillan Press, second edition, 1986), 10–13.

23 Toledano, “Law, Practice, and Social Reality,” 156.

24 Cole, *Colonialism and Revolution*, xi–xii.

25 Mine Ener, *Managing Egypt’s Poor and the Politics of Benevolence, 1800–1952* (Princeton, NJ: Princeton University Press, 2003), ix–xx.

dissertation. My advisor, Khaled Fahmy, presented me with a jewel from a treasure box, I say there; when I got to the archives I realized it was not a treasure box but rather a mine.²⁶ I like this metaphor, since it reveals the tedious labor of archival work; yet it also conceals another form of labor: it assumes that the difference between the gold and the debris is easily discernable, which of course it is not. That which we find and value and that which would be thrown away are not inherently different.

Harriet Bradley described her archival work as “a rite of initiation into the profession. Working in Bodley, I was at one and the same time legitimating my claim to be included in the fraternity/sorority, demonstrating my membership by partaking of one of its characteristic activities of occupational identity, one claims the archival space as one’s own.....Only what has been pre-judged as relevant is likely to be recovered,” she observes, “but this hardly diminishes the intoxication of the moment of discovery when the historian experiences *her* first hearing of past voices”.²⁷

When historians try to turn the archives into an object of research, they do not look for structure and relationship, they historicize it. One way of historicizing the archives is by reading Ranke. Ranke, as we learn in our undergraduate years, saw the practice of history writing as telling the past “as it really was”. To Ranke, this unmediated access to the past (this fetish, LaCapra would call it), was achieved in the archives. It was within the archives, he claimed, that the historian could forget his personal predispositions and loyalties, and write objective history. As one of the forefathers of the modern historical profession, Ranke established the archives as the most important site for the production of historical knowledge, defining “scientific” history and a new model of historical research for succeeding generations. For Ranke, using the archives awarded the initiated historian and enhanced his professional position. It provided him with exclusive clues about the truth of the past and gave him an advantage in scholarly terms.²⁸

Until the beginning of the nineteenth century, the archives were meant neither for the public, nor for researchers. Information was kept deliberately apart from the public, to prevent harm to the Habsburg (or any other) monarchy. The information accumulated was supposed to furnish the state with data deemed useful for its own rule. Getting into the archives, for Ranke, was not at all simple. It meant begging for the goodwill of the sovereign, employing his personal contacts, and then establishing good connections with the lower ranks of bureaucracy. Conducting his research in Venice and Vienna, Ranke was also a foreign subject, dependant on the archive

26 Liat Kozma, “Women on the Margins and Legal Reform in Late Nineteenth-Century Egypt, 1850–1882,” (unpublished Ph.D. dissertation, New York University, 2006), iii.

27 Harriet Bradley, “The Seductions of the Archive: Voices Lost and Found,” *History of the Human Sciences* 12 (1999): 107–122.

28 Kasper Risbjerg Eskildsen, “Leopold Ranke’s Archival Turn: Location and Evidence in Modern Historiography,” *Modern Intellectual History*, 5 (2008): 425–429.

policy of sovereigns and state governments. The narratives he ended up producing were affected by the administrative obstacles of the archive policy of nineteenth-century states and his own status as a foreign subject.²⁹

Ranke's access to the archives enabled him to claim a scientific and objective value for the work of the professional historians, as opposed to the amateur historian, or to practitioners in other disciplines. Indeed, new nineteenth-century disciplines defined and justified themselves through their control of specific sites for the production of knowledge. Ranke thus managed to convince his readers, his colleagues and his students that proper history could only be written from within the archives.³⁰

Ranke's narrative (unlike his letters to family and friends), described his archival work as relatively effortless. The historian, to Ranke, was hoping to become "if not a Columbus at least a kind of Cook of some beautiful, unknown island of universal history".³¹ (One cannot help noting the colonial connotations of such a metaphor; in another letter he likened the archive to a mine; both metaphors separate, effortlessly, seamlessly, text from context.) The archives his books described had no opening hours, no restrictive librarians or archivists standing between the researcher and his sources. In his narrative, history immediately presented itself to the historian. In his letters, however, he writes of the persons he had to contact and convince to allow him access; even once inside, many documents remained inaccessible to him; he also reports how he had to discipline himself for the work in the archives, how he structured his day, and planned his diet. Even when states did open their archives to researchers, they had control over which documents would be accessible and to whom.³²

Present-day historians are often not that different, in creating a narrative that conceals the work invested in producing the archives they read and in glorifying their unmediated access to the past.

9.4 Historicizing the Archives

Historians of nineteenth-century Egypt recognize that their understanding of Egypt's past is mediated not only through the everyday decisions of the clerks who documented them, but also through twentieth-century royal, nationalist, or bureaucratic agendas.

²⁹ Philipp Müller, "Doing Historical Research in the Early Nineteenth Century, Leopold Ranke, the Archive Policy, and the *Relazioni* of the Venetian Republic," *Storia della Storiografia* 56 (2009): 81–103.

³⁰ Eskildsen, "Leopold Ranke's Archival Turn," 427–429.

³¹ Quoted in Müller, "Doing Historical Research," 81.

³² Eskildsen, "Leopold Ranke's Archival Turn," 438–442; Müller, "Doing Historical Research," 86–87.

At the beginning of the nineteenth century, official documents were stored in a state archive (Arabic *daftarkhana*, Ottoman Turkish *defterhane*, literally “the house where registers are stored”) in Cairo’s citadel. In the 1840s, new regulations stipulated which records would be preserved in the provinces and for how long, which should be sent to Cairo and when, and which should be destroyed. The *daftarkhana* was not a research archive and was not designed to be one—it was organized in a way that would enable the retrieval of documents for official use. Due to lack of storage space, according to the Egyptian National Archives’ website, documents were stored in the citadel’s prison, and even cavern was used for that purpose. Historians did their research in the library, not in the archives.³³

In 1920, King Fu’ad opened the state’s archives to dozens of foreign archivists, philologists and historians, initially headed by the Italian Eugenio Griffini, to write his dynasty’s history. Over the course of twenty-five years, about eighty books were published on modern Egyptian history. With the help of local editors and translators, they helped to create a modern research archive. Since most of the documents pertaining to the royal dynasty were in Ottoman Turkish, they edited and translated a select group of royal papers into both Arabic and French. These papers became the nucleus of the Egyptian National Archives.

By the 1920s, Ottoman Turkish was seen as a residue of a decadent past, and most Egyptian and foreign scholars could not read it. Interestingly, since Griffini could find no one capable of translating documents from Ottoman Turkish to French, the French texts were translated from Arabic – making them grossly dissimilar to the Ottoman originals. One of the translators from Ottoman Turkish was, interestingly enough, Hayyim Nahum, the Grand Rabbi of the Jewish community. This process, backed by the palace and taking place, physically, in the palace’s archives in ‘Abdin, created texts, periodizations and subject headings that reflected, first, a supposedly Arab past of the ruling dynasty and, second, a narrative that hailed the king’s ancestors as the founders of modern Egypt. In this process, moreover, Egypt’s past was de-Ottomanized. Generations of Egyptian and foreign historians did not bother to read the original Ottoman texts, called historical figures by their Arabized names, incorporated the translator’s selectivity and mistakes.³⁴

This project, conducted mainly by foreign historians, set the criteria for what constituted proper historical knowledge with regard to modern Egypt. Such knowledge (objective and scientific) could only be located and created through archival research.

³³ Yoav Di-Capua, *Gatekeepers of the Arab Past: Historians and History Writing in Twentieth-Century Egypt* (Berkeley: California University Press, 2009), 96–98.

³⁴ Toledano, *State and Society*, 28; Khaled Fahmy, *All the Pasha’s Men: Mehmed Ali, His Army, and the Making of Modern Egypt* (Cambridge: Cambridge University Press, 1997), p. 25n.60; Ehud R. Toledano, “Mehmet Ali Paşa or Muhammad Ali Basha? An Historiographic Appraisal in the Wake of a Recent Book,” *Middle Eastern Studies* 21 (1985): 141–159; Di-Capua, *Gatekeepers of the Arab Past*, 103–132.

In the 1930s, the Egyptian National Archives, located in the 'Abdin palace, became part of a new generation of Egyptian historians' ethos of professionalism, expert authority, and scientific objectivity—a value aspired to by professional historians at the time.

The first generation of Egyptian historians relied on the archives for the creation of such an objective and scientific history. They were responsible for having documents properly stored in a safe place, protected from the additional enemies of Egyptian state documents, namely shredding, sale, fires, and mice. The documents needed to be carefully classified, catalogued, and indexed. So, they assisted in the organization, systematic arrangement and facilitation of the archives for other scholars. The archives became a part of professional requirements, of the historian's rite of passage, in which he was "uncovering" and "unveiling" the true past of Egypt. Establishing one's work on original source material distinguished the professional historian from the amateur.³⁵

9.5 An Israeli Historian in Cairo

Winter 2003/4. I run up the stairs. I deposit my passport with the guards; I show off pictures of my twins. I run up the stairs. I am excited to learn what the day will bring.

Ehud Toledano arrived in Cairo, "a strange city, once forbidden and threatening," in the summer of 1979, five months before the opening of the Israeli embassy to Egypt.³⁶ My first visit to the Egyptian National Archives took place 22 years later, in a completely different political atmosphere. During my one-year stay in Cairo, some colleagues thought that we were very "cold hearted" for leaving for Cairo with baby twins; one even asked me whether I was not afraid that I might be murdered. In Cairo, friend worried when we left for Tel Aviv every other month, as buses were exploding in the streets. And yet, what sometimes felt like what poet Sigalit Banai described as a "one-sided love" brought us back each time. Maybe it is the excitement of being "an Israeli in Cairo". That and the archival fetish.

In a private party of AUC students
At the large apartment in quarter of Zamalek
Fadi from Ramallah refuses to sit in the same room with Enav from Jerusalem
Haysam met her in the Diwan bookstore
And invited her

³⁵ Yoav Di-Capua, "The Professional Worldview of the Effendi Historian," *History Compass* 7 (2009): 306–328; and his *Gatekeepers of the Arab Past*, 196–199.

³⁶ Ehud R. Toledano, "An Israeli in Cairo," *The Jerusalem Quarterly*, 23 (1982): 3.

She works in the Israeli Academic Center
 Which Fadi says, everybody knows to be a branch of the Israeli Mossad
 But Enav does not look like a Mossad agent
 With that delicate Arabesque tattoo on her shoulder
 And long honey-like hair
 I know how it looks from here, she tells Haysam in Arabic
 Believe me, in Israel I am considered a traitor
 An activist against the Occupation
 I don't even define myself as a Zionist
 Writing my research on Jewish prostitutes in Cairo in the nineteen forties
 And the Academic Center is the only way to get the visa
 And to get into the archives.

“Enav”, in Sigalit Banai, Shkhunat Hatikva-Cairo (in Hebrew; Tel Aviv, 2013), p. 17.

9.6 Epilogue

June 2010. I meet Tom at the library. He is working on 1948. I ask him “What archives are you using?” and tell him what I am writing about: “I am trying to demystify the archives, but still I feel that mine is bigger because I’ve been to the Egyptian National Archives.” Tom says: “You know, you can write your article in more than one voice”.

In M. Night Shyamalan’s 1999 movie *The Sixth Sense*, the child-protagonist, Cole Sears, communicates with spirits, who, according to him, “don’t know they’re dead.” Part of the allure of the archives, comments Elizabeth Birmingham in her essay on her own archival experiences, is exactly that—“meeting the spirits” who do not even know that they are dead.³⁷ Ya’qub Jalula does know he is already dead. After all, his words could only be found after his death.

It is time to reconsider the allure of the archives for me, and my fascination with Ya’qub Jalula’s case. Maybe it is what Birmingham is talking about—staring at the face of a man who, unlike innumerable men and women in the archives, does know that he is already dead. Maybe it is about finding a “fellow Jew” in the archives. Maybe it is what Morrison is referring to—the allure of a first-person note, wishing to impose its own narrative on a court record, that is usually much more dialogical, in which the policeman or judge always has the final say.

It’s also the transparency of mediation. Archival records are always mediated, we are told. The spoken words of an illiterate slave are translated into literary Arabic and to a legal language and are reduced to that which would have legal implications. Here, a text has three, not one, translations: first it is summarized by the deceased’s wife (a testimony which is itself translated to the legal bottom line—“he blames no one

³⁷ Elizabeth (Betsy) Birmingham, “‘I See Dead People’: Archive, Crypt, and an Argument for the Researcher’s Sixth Sense,” in *Beyond the Archive*, 139.

for his death"); then it is translated from Hebrew to French and, finally, from French to Arabic—a process similar to the one the archive itself was to undergo six decades later (with Ottoman Turkish being translated by a Jew).

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